QUARTERLY REPORT

OF THE

ATTORNEY GENERAL

OF

ALABAMA

For the Period

July 1, 1945

Through September 30, 1945

Volume XL

TO ALL STATE AND COUNTY OFFICERS OF ALABAMA:

In accordance with Code 1940, Title 55, Section 228, I am submitting to you the Quarterly Report of the Opinions of the Attorney General of Alabama. This Report covers all opinions rendered by the Attorney General from July 1, 1945, through September 30, 1945.

The Section of the Code referred to above requires that seven copies of this Quarterly Report be sent to each of the Probate Judges in the State, and the Probate Judge shall in turn deliver one volume each to the Clerk of the Circuit Court, the Sheriff, the Tax Collector, the Tax Assessor, the County Superintendent of Education, and Deputy or County Solicitor. Said Code Section also requires a copy of said Report be sent each Circuit Solicitor and the chief executive officer of each incorporated municipality in the State.

If you have any suggestions to make regarding the improvement of the service, we should be glad to receive it.

The office of the Attorney General is anxious to render prompt and efficient service to the State and county officials.

Very respectfully,

ROBERT B. HARWOOD,

Attorney General.

WETUMPKA PRINTING CO.
Printers and Publishers
Wetumpka, Ala.
1945

OPINIONS

OPINIONS

July 11, 1945.

Hon. W. W. Lazenby,
Tax Assessor, Lee County,
Opelika, Alabama.

Taxation—Municipalities—Special School Tax—Amendment III, Constitution 1901.

Property not embraced within municipality at time levy becomes effective not subject to special school tax.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion, bearing date of June 21, 1945, is as follows:

"By election held on May 15th, 1945, the City of Opelika (Lee County) voted to levy for public school purposes a special tax of thirty cents on each one hundred dollars worth of taxable property within the City of Opelika for a period of eight years, the first of such years to be the tax year ending on September 30th, 1945, and the last of such years to be the tax year ending September 30th, 1952. By an order made and entered on May the 18th, 1945, the Court of County Commissioners of Lee County levied said tax.

"By local bill H. 432, which by its terms became effective upon its approval by the Governor and which was approved by him on June 16th, 1945, the corporate limits of Opelika were enlarged and additional territory added.

"We have just completed our collectors abstract, have all our accounts figured for this year.

"I will appreciate your kindness, if you will give me your opinion, based on the above facts, as to whether or not this tax should now be levied against the property added and which is now within the corporate limits of Opelika by virtue of said local bill, for the current or tax year ending September 30, 1945.

"I might add that I have talked to the mayor of Opelika and he is of the opinion that we will not collect the tax on the extension until 1946."

It is my opinion that the tax cannot be collected for the tax year ending September 30, 1945. Amendment III of the Constitution of Alabama of 1901, Section 2, authorizes the several school districts of any county, including incorporated cities or towns, to levy and collect a special tax not exceeding thirty cents on each one hundred dollars worth of taxable property. The machinery for carrying out the provisions of this Amendment is found in Title 52, Sections 254, et seq., Code of Alabama 1940.

It is stated as a fact in your inquiry that the first collection of the tax will be for the tax year ending September 30, 1945. It is assumed, therefore, that the beginning of that tax year was October 1, 1944. The tax year for which the special tax is levied, therefore, is the period October 1, 1944-September 30, 1945.

The levy of the tax is said to have been made on May 18, 1945. In the case of **Johnson, Tax Assessor v. State ex rel City of Birmingham,** 245 Ala. 499, 17 So. 2d 662, it was held that a tax is limited to the property within the city on the date that the levy becomes effective. It is my opinion that the levy of the special school tax referred to in your inquiry became effective on or before May 18, 1945, a time preceding the extension of the corporate limits of the City of Opelika. The property within the extended portion of the city not being within the municipal or school district involved at the time the levy became effective, it is my opinion that the special school tax should not be collected upon the property embraced in the addition to the City of Opelika for the tax year ending September 30, 1945. Cf. Quarterly Report of Attorney General, Vol. 33, page 26.

Yours very truly,

WILLIAM N. McQUEEN,

Acting Attorney General.

July 16, 1945.

Hon. Cecil F. Bates,
County Attorney,
Mobile County,
Mobile 5, Alabama.

Code 1940, Title 51, Sce. 3—Taxation—Exemptions—Manufacturing Plants—

County governing body is authorized to exempt an addition to or extension of a shipbuilding plant or paper mill from taxation for a period not exceeding ten years, beginning with the date of completion of the addition or extension, without regard to prior exemptions in favor of the plant or mill so added to or extended.

Opinion by Assistant Attorney General Matthews.

Dear Sir:

Your request for an official opinion, bearing date of July 12, 1945, is as follows:

"The Board of Revenue and Road Commissioners has instructed me to propound to you questions relating to the following matters:

"Section 3 of Title 51 of the Code of Alabama of 1940, after specifying a great number of different types of factories, industries and plants falling within the influence of the section, provides in part as follows:

"' *** the court of county commissioners, or other court or board having like jurisdiction of any county, and the constituted authorities of any city or town in which it is proposed to locate, or add to, or to extend any such factories or plants, are authorized and empowered to remit the taxes assessed for all county and municipal purposes, except for county school and school district purposes, on such factories or plants and on all extensions or additions to such factory or plant as are already built and operated, and on all plants, works, machinery and other equipment of such factories or plants, or additions thereto, or extensions thereof, and also on all of the capital stock of such factories and plants, or increase of such capital stock made for the purpose of making the additions thereto or extensions thereof for a period not exceeding ten years from the date of the incorporation or organization of such factories or plants, if incorporated and organized under the laws of the state of Alabama, or for a period not exceeding ten years from the date of being granted permission to do business in the state of Alabama, if a foreign corporation, or from the date of completion of such plant or factory, or from the date of the completion of such addition or extension thereof. *** '

"Where the Board of Revenue and Road Commissioners of this county, acting under the authority contained in this section, has granted a tax exemption on a factory or plant when originally constructed, or upon an extension or addition thereto, has this Board the authority under this section to grant an additional exemption or exemptions by reason of additions or extensions thereafter made, each such exemption to be for a period of ten years and to apply only to the addition or extension then being made? Would this be true although the total period of such exemptions will extend beyond the original period of ten years?

"Immediately following the above quotation from Section 3 of Title 51 of the Code of Alabama of 1940 the following sentence appears:

"' *** Provided, however, that all exemptions and remissions above provided may be granted for a period not exceeding ten years when granted to or in connection with the factories or plants, or additions thereto, or extensions thereof, for the manufacture or production of pulp, paper, paper bags and other pulp products, and plants for the purpose of building ships. *** '

"Your attention is called to the fact that while the powers granted generally by this section relate to a great number of different types of factories, industries and plants, only two general types of factories, industries or plants are mentioned in this sentence. If your answers to the foregoing questions were in the affirmative, then please advise the effect of this sentence on the power of this Board to grant such additional exemption or exemptions to the classes of factories or plants specified in this sentence. Is it the intention of this sentence to set up the factories or plants mentioned therein in a class different from that of all other factories and plants mentioned in the section for the purpose of limiting the total period of all exemptions granted to such factories or plants to ten years? To be more specific, where this Board has granted an exemption to a paper mill, which falls within the provisions of this sentence, does this Board have the authority to now grant an exemption for

ten years on additions or extensions to be made thereto when by so doing the total period of exemptions will be in excess of ten years?

"Due to the fact that the Board now has before it petitions involving the above questions, you may be assured that an early response will be appreciated."

The first, second and fourth questions are answered in the affirmative, the third question is answered in the negative.

The statute in question (Code 1940, Title 51, Section 3) at the very outset includes "plants for the purpose of building ships" and "factories for the manufacture of bags, wood pulp products *** paper, paper bags and other pulp products" as subjects of exemption.

The first proviso, above quoted, in the request for this opinion, relates only to such shipbuilding plants and paper mills, but its meaning and intent are altogether ambiguous and obscure, or at least sufficiently uncertain to be taken as a limitation of the exemption already broadly declared.

There would seem to be no good reason or basis for discrimination as between such plants and the numerous other kinds of plants as to which no such proviso was inserted. Such distinction or discrimination would in my opinion be arbitrary and unreasonable, so far as appears from the statute in its entirety.

The statute was evidently enacted to stimulate investment of capital in manufacturing enterprises, both by construction of new plants and by enlargement of existing plants by additions or extensions. It should be construed in such wise as to accomplish such purpose. It is immaterial, in my opinion, whether the new capital be invested by construction of a new plant or by enlargement of an existing plant. In either event the same object is attained, from the statute's point of view, viz., investment of fresh capital and creation of employment.

And in either case, whether by original construction, or by expansion, of a plant the period of exemption is limited to ten years "from the date of completion of such plant or factory, or from the date of completion of such addition or extension thereof." In other words, the exemption, not to exceed ten years, begins to run from the date of completion of the new plant, or of the addition or extension, as the case may be. The two periods, or modes of fixing the period of exemption, are separate, distinct and independent.

In my opinion, therefore, the period of exemption for an addition or extension may be fixed at any time not exceeding ten years, regardless of whatever exemptions may have been previously granted for prior additions or extensions or for original construction.

Yours very truly,

WILLIAM N. McQUEEN,

Acting Attorney General.

July 18, 1945.

Hon. J. H. Sims,
Ex-officio Chairman,
Commissioners' Court,
Bullock County,
Union Springs, Alabama.

Counties—Schools—County boards of education—Title 52, Section 207, Code 1940—Opinions overruled—Words and Phrases, "Support of public schools."

Appropriation by county governing body to County Board of Education to improve lighting in public school buildings authorized under Title 52, Section 207, Code of Alabama 1940.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion, bearing date of July 13, 1945, is as follows:

"The Commissioners' Court of Bullock County, Alabama, will appreciate very much your official opinion on the following resolution passed at a regular meeting held July 9th, 1945.

" 'The Lions Club sent a committee of two, J. T. Ogletree, and W. B. Cockran, asking for a contribution in the amount of $500.00 to be used by the Educational Department in the improvement of lighting school buildings; this to be in cooperation with Womens Clubs, Lions Club: together with all Civic Clubs of Bullock County. A motion by Commissioner J. W. Shaw, seconded by Commissioner B. P. Hixon. All Commissioners voting yes, provided this to be a legal expenditure. That $500.00 payable from the County General Fund be expended through County Superintendent of Education for this purpose.' "

As I interpret the above statement your inquiry is as follows:

"May the Court of County Commissioners of Bullock County appropriate $500.00 from the General Fund of the County to the County Board of Education, which appropriation is to be used for the purpose of improving the interior lighting facilities in public school buildings?"

In my opinion the Court of County Commissioners is authorized to make such appropriation. Title 52, Section 207, Code of Alabama 1940, provides:

"§ 207. Appropriation of funds out of county treasury.—The courts of county commissioners or boards of revenue of the several counties of Alabama are authorized at any meeting of said court in any calendar year to appropriate any funds they may deem proper and expedient out of the general funds of the county treasury for the support of the public schools within said county."

It was formerly held by an opinion of the Attorney General, **Biennial Report of the Attorney General,** 1930-1932, page 507, that the above quoted section authorizing the county to appropriate funds "for the support of the public schools" does not contemplate appropriations for erection, repair, and equipment of public schools, but only to aid in the conduct of them as already existent, running institutions. This opinion further held that the purpose of the section was to authorize appropriations for paying the salaries of teachers.

Later opinions of the Attorney General held that Title 52, Section 207, Code of Alabama 1940, authorized the Commissioner's Court to appropriate to the County Board of Education money to be used for athletic equipment. See also **Biennial Report of the Attorney General,** 1934-1936, page 616; **Quarterly Report of the Attorney General,** Vol. 28, page 171.

In my opinion the appropriation described in your inquiry is for the "support of the public schools." In holding that the county may appropriate from the General Fund money to be used for improving the interior lighting in public schools, we do not mean to indicate that the county may appropriate funds to the County Board of Education for any purpose merely because it is desirable. The county is authorized to appropriate funds to the County Board of Education under the provisions of Section 207, supra, not solely because the improvement of lighting facilities is desirable, but because such improvement in addition to being desirable is also reasonably necessary for the efficient operation of the schools.

Yours very truly,

WILLIAM N. McQUEEN,

Acting Attorney General.

July 24, 1945.

Hon. Chas. R. Wiggins,
Judge, 14th Judicial Circuit,
Walker County,
Jasper, Alabama.

Act No. 426, approved July 7, 1945—Code 1940, Title 42, § 21 as amended—Probation—

All orders or failure to make an order upon applications for probation in a nisi prius court should be certified by the clerk of such court to the Board of Pardons and Paroles.

Opinion by Assistant Attorney General Matthews.

Dear Sir:

Your request for an official opinion, bearing date of July 17, 1945, is as follows:

"As Judge of the 14th Judicial Circuit of the State of Alabama, in pursuance to regular work of the Court, I have received a plea of guilty

on the part of one Alfred Hill, charged with forgery in the second degree. This defendant has been sentenced to serve a period of two years in the penitentiary; and upon pronouncement of sentence, the defendant has applied in open Court for probation in this case. I have before me a mimeographed copy of a recent Act of the legislature, (H. 8—Golson, of Elmore—No. 426), approved July 7, 1945, purporting to amend Sections 20, 21, 24, and 25 of Title 42 of the Code of Alabama. It is observed in Section 2 of the Act that the following verbiage is found, "Thereupon in every case the clerk of the court shall immediately forward one copy of the probation officer's report and any affidavits or written evidence furnished the court by the defendant together with a certificate of the action of the court on the case together with such other information as the Board may require to the Board of Pardons and Paroles at Montgomery, Alabama.'

"I wish you would give me your construction of Section 2 of said Act in respect to the requirements on the part of the Circuit Court to forward to the Board of Pardons and Paroles any and all cases of probation coming before the Circuit Court, irrespective of the action or non-action of the Court in connection with applications for probation.

"Since this defendant is in jail awaiting deportation to the penitentiary, inquiry is made, in the event his petition for probation is declined by the Court, and under the interpretation of the Act as a whole, can the Board of Pardons and Paroles claim authority and jurisdiction in this case to revise the action of this Court, no matter what order may be entered?

"In the meantime, if the defendant makes no application for bail, what becomes of him?

"Inasmuch as a very limited time is provided in the Act, I would like to have your advice by earliest mail.

"This may be considered by you to be a most peculiar request; but in the interests of uniformity, it seems to me that you might be in a position to give me some information on what was intended by the proponents of this legislation. The Court desires that the Defendant shall obtain his full rights; but at the same time, the Court does not desire to permit unwarranted invasion of judicial authority vested in nisi prius Courts."

The apparent intent of Section 2 of the Act in question (Act No. 426, H. 8, approved July 7, 1945, amending Code 1940, Title 42, § 21) is, in all cases where defendant is eligible for probation, to require the court, before pronouncing sentence, to consider the probation officer's report. Such report must be filed within ten days after defendant's conviction or plea of guilty, or certification from an inferior court as prescribed in Section 1 of the Act.

The court has five days after the report is filed within which to make an order granting or denying probation. Failure to make an order within the prescribed time is tantamount to an order denying probation.

In any event, whatever the court may have done or failed to do, the clerk of the court, after expiration of the five days in question, must forward the various papers involved, together with his certificate, to the Board of Pardons and Paroles.

Within five days after receipt of the papers and certificate, the Board may transmit them, with its "recommendations" to the Court of Appeals, for further action.

The Court of Appeals, or one of its judges in vacation, within seven days after receipt of the papers from the Board, is required to make such order as in its judgment the lower Court should have made, "including the concurrent right to revoke the order of probation which it entered."

If any meaning is to be ascribed to these quoted words, the inference is that: (1) all orders, or failure to make an order, by the lower court, must be certified by the clerk to the Board of Pardons and Paroles; and (2) the Board may or may not, in its discretion or at its election, refer the matter to the Court of Appeals for review.

The net result is to leave it to the Board to say whether or not the lower court's order, or failure to make an order, shall be revised by the appellate court. In other words the Board acts as an intermediary, so to speak, on the way to the Court of Appeals, and exercises a certain amount of discretion in determining whether or not the action or inaction of the lower court shall be revised by the Court of Appeals.

If the Board fails to call on the Court of Appeals for its judgment by failure within five days to transmit the matter to that court, the judgment of the lower court becomes final.

In any event, pretermitting any questions as to constitutionality, I am of opinion that under the Act in question all applications for probation and the action of the trial court thereon must be certified to the Board of Pardons and Paroles.

Whether the Board in the exercise of its power either to refer the application to the Court of Appeals or to decline to do so, is exercising judicial power, is a question, I believe, that should be determined by the courts rather than this office. Code 1940, Title 55, §§ 228, 240.

Yours very truly,

WILLIAM N. McQUEEN,

Acting Attorney General.

July 27, 1945.

Hon. T. A. Barnett,
Tax Collector,
Walker County,
Jasper, Alabama.

Walker County—Local Acts, H. B. 624, H. B. 625—Tax Assessor—Tax Collector—Constitution 1901, § 105—Acts 1943, p. 115, Nos. 113, 114—

The terms of office of the tax assessor and the tax collector of the various counties, being fixed by general law, local acts purporting to abridge such terms of office violate Section 105 of the Constitution and are void.

Opinion by Assistant Attorney General Matthews.

Dear Sir:

Your request for an official opinion, bearing date of July 17, 1945, is as follows:

"I request your official opinion upon the following subject:

"STATEMENT OF FACTS.

"By an Act of the Legislature approved June 8, 1943, (Acts 1943, page 115), the terms of all Tax Collectors of the State were extended two years, making the term of office from October 1, 1943 to and including September 30, 1949, and providing that the term of office of all Tax Collectors be six years, and that they should be elected at the general election in November, 1948, and every six years thereafter.

"By a Local act, for Walker County, House Bill #624, defining the term of office of the Tax Collector of Walker County, it is provided therein 'that beginning on October 1, 1947, the term of the Tax Collector for Walker County, Alabama, shall be for a period of four years' and that he shall be elected at the General Election in November, 1946, and every four years thereafter. The effect of this Local Bill is to reduce the term of the present Collector two years and make the term of office of the Tax Collector of Walker County four years while it remains in all other counties six years and making the Collector elected in Walker County in November, 1946 and all other Collectors elected in November 1948.

"Question.

"1.—Does the Local Act, recently passed and approved by the Governor, House Bill #624, defining the term of the Tax Collector of Walker County, Alabama, and taking from the term of that office two years and applying only to the office of the Tax Collector in Walker County, violate the pertinent provision of the Constitution of Alabama?"

Your question is answered in the affirmative. **Constitution 1901, § 105; Evans v. Long,** 227 Ala. 335, 149 So. 837; **Acuff v. Weaver,** 17 Ala. App. 532, 86 So. 167.

In **Evans v. Long,** supra, it was held that where under general law the salary of chief deputy sheriff of a county was fixed within certain limits, a subsequent local act fixing the salary beyond the maximum limit under general law violated Section 105 of the Constitution and was void.

In **Acuff v. Weaver,** supra, cited and approved in **Evans v. Long,** supra, it was held that where the compensation of the judge of the county court of Shelby County was fixed at $450 annually under general law, and by local act the legislature undertook to increase such compensation to $1,200, the local act violated the Constitution.

I can see no difference in principle between a local act that purports to change the term of office of a county official from the term fixed by general law and a local act changing compensation from that fixed by general law.

I am of opinion therefore that the local act in question, (H. B. 624) is unconstitutional and void because it fixes a different term of office for the tax collector in Walker County from that fixed by general law (Acts 1943, p. 115, No. 114, approved June 8, 1943).

What has been said applies likewise to H. B. 625, purporting to abridge the term of office of the Tax Assessor of Walker County, as heretofore fixed by general law (Acts 1943, p. 115, No. 113). This opinion therefore will serve to answer the inquiry from the Tax Assessor of said County, dated July 18, 1945, as to the validity of H. B. 625.

Yours very truly,

WILLIAM N. McQUEEN,

Acting Attorney General.

August 1, 1945.

Hon. Wm. W. Hill,
Judge of Probate,
Montgomery County,
Montgomery, Alabama.

Applicant must certify his residence address, his business address, his occupation and the name of his employer as a prerequisite to obtaining an absentee ballot.

Act No. 478, 1945 Legislature of Alabama, does not apply to special elections.

Election on proposed constitutional amendment is a general election.

The present laws of Alabama do not provide for absentee balloting in special elections.

Opinion by Assistant Attorney General Smith.

Dear Sir:

Your request for an official opinion, bearing date of July 25, 1945, is as follows:

"The 1945 session of the Legislature passed Act #478 which sets up the machinery for absentee voting in this State. Act #408 repealed practically all of the absentee voting laws in the 1940 Code.

"I respectfully request an opinion on the following questions:

"(1) Should an absentee ballot be sent or delivered to an applicant for an absentee ballot who fails to certify in writing on his application, in addition to the other information required in the Act, his residence address, his business address, his occupation, and the name of his employer? (See Section 4A of the Act.) If the applicant fails to certify in writing his residence address, his business address, his occupation and the name of his employer should an absentee ballot be sent or delivered to said applicant?

"(2) Does Act #478 apply to special elections?

"(3) Does Act #478 apply to Constitutional Amendment elections such as the coming election on October 2, 1945?

"It is my intention to have two forms of application for absentee ballots. One form is to be used by absentee voters who apply in person and the other form is for those voters who are employed temporarily and reside outside of the County and for voters who are in the Armed Forces. On the latter form it is my intention to have the voter certify that he is employed temporarily and resides outside of the County of his legal residence. Is this procedure correct in your opinion."

1. It is my opinion that it is your duty to decline to forward an absentee ballot to any applicant who fails or refuses to certify in writing, in addition to any other information required, his residence address, his business address, his occupation, and the name of his employer. Our courts have consistently held that the right to vote or the exercise of the elective is a privilege and not a right. **Gardina v. Board of Registrars of Jefferson County,** 160 Ala. 155, 48 So. 788; **Garrett v. Cunningham,** 211 Ala. 430, 100 So. 845; **Davis v. Teague,** 220 Ala. 309, 125 So. 51. In **Garrett v. Cunningham,** it was held that the "right to vote is neither a property right nor a right of person, but exists only as conferred by Constitution and statute."

It is a matter of general knowledge that abuse of the absentee voting privilege has been subject to serious public criticism, and the Legislature clearly contemplated a system which on the one hand would retain the absentee voting privilege while on the other hand it would prevent its abuse. In so doing certain prerequisites were set forth, including the applicant certifying his residence address, his business address, his occupation, and the name of his employer. It naturally follows that the voter who fails or refuses

to certify this information has no claim to the privilege of casting an absentee ballot. Whenever these prerequisites have been met, it is your duty to forward an absentee ballot to the voter. However, unless and until the applicant has complied with these conditions it is your duty to refuse to furnish such applicant with the absentee ballot.

2. Act No. 478 provides for absentee voting in primary, general and municipal elections. It contains no provisions for the exercise of such a privilege in special elections. It is, therefore, my opinion that it does not apply thereto.

3. The answer to your third inquiry necessitates the determination of whether or not the coming election on the proposed constitutional amendment falls within one of the three types of elections specified in Act No. 478.

In my opinion it does. Webster defines the word "general" as of or pertaining to the whole, not local. Black's Law Dictionary defines the same word as "pertaining to, or designating the genus or class or distinguished from that which characterizes the species or individual. Universal, not particularized; as opposed to special. Principal or central; as opposed to local. Open or available to all, as opposed to select. Obtaining commonly, or recognized universally; as opposed to particular. Universal or unbounded; as opposed to limited. Comprehending the whole, or directed to the whole; as distinguished from anything applying to or designated for a portion only."

It has been held that "general election" throughout the public statutes is uniformly used to designate what before had commonly been known as "freeman's meeting," **Martin v. Fullam,** 97 A. 442, 90 Vt. 163, and that, "Any election at which there is a general and popular expression of the public will, whether that election be a state, county or city election, is a 'general election.'" **Wing v. Ryan,** 6 N. Y. S. 2d 825, 255 App. Div. 163.

In addition to the above, Section 284 of the Constitution of Alabama provides, in part, as follows:

> "The legislature shall order an election by the qualified electors of the state upon the proposed amendments, to be held either at the general election next succeeding the session of the legislature at which the amendments are proposed or upon another day appointed by the legislature not less than three months after the final adjournment *** "

You will also note that Section 4 of the Act calling the election provides that "the election shall be held in all things in accordance with the law governing general elections," which clearly discloses a legislative intent to treat this as a general election.

This, in my opinion, clearly indicates that elections on proposed amendments should in the first case be held at and as a part of the next general election. The fact that such election may be held at a different date does not change its character. I, therefore, hold that an election held to determine the adoption of a constitutional amendment is a "general election" within the definition of the words as used in Act No. 478.

The procedure proposed in your office appears to me to be a correct application of the law.

Yours very truly,

ROBERT B. HARWOOD,

Attorney General.

August 1, 1945.

Dr. Douglas L. Cannon,
Department of Public Health,
Montgomery 4, Alabama.

Counties—Rabies—Rabies Inspectors—Title 22, Section 110, Code of Alabama 1940.

Counties not authorized to employ full-time rabies inspector and pay salary.

Municipalities—Rabies—Rabies Inspectors—Title 37, Section 493, Code of Alabama 1940.

Municipalities may employ rabies inspector and pay salary.

Title 22, Section 14, Subsection 12, and Title 12, Section 12, Subsection 19, Code of Alabama 1940 do not authorize county to appropriate funds to pay salary of rabies inspectors.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion, bearing date of July 18, 1945, is as follows:

"Your attention is respectfully directed to the attached recently amended section of the Dog Control Act. It was the intent of this legislation to give a county or municipality, one or both, the right to employ a full-time rabies inspector. Question has arisen as to whether this end has been attained, as evidenced by the enclosure I am placing at your disposal from the attorney for the County of Mobile. Please advise whether, in your opinion, a county or municipality, separately or together, may appropriate for the employment of a full-time rabies inspector.

"In the event the Act appears to be indefinite on the matter in which your opinion is sought, is there not sufficient authority in Subsection 12 of Section 14 of Title 22 and Subsection 19 of Section 12 of Title 12 of the 1940 Code to enable a county to make the necessary appropriation for the employment of a full-time rabies inspector? The first cited section of the law states, in part, that a county may appropriate money for the prosecution of public health work which has been recommended by the County Health Officer and endorsed by the County Board of Health.

Subsection 19 of Section 12 of Title 12 gives the Commissioners' Court, or like body, the authority to appropriate money to promote or enforce the health and quarantine laws of the state, when requested so to do by the State Board of Health."

1. It is my opinion that the County Board of Health with the approval of the State Health Officer and the State Veterinarian may appoint a rabies inspector for the county, but that such rabies inspector and his deputies are limited to the fees enumerated in Chapter 2, Title 22, Code of Alabama, 1940, as amended. This county rabies inspector may not be paid a salary.

2. It is my opinion that a municipality, separately from the county, may employ a full-time rabies inspector for the city and pay said inspector a salary.

3. It is further my opinion that neither Title 22, Section 14, Subsection 12, nor Title 12, Section 12, Subsection 19, Code of Alabama 1940, authorizes the county to appropriate funds for the payment of a full-time rabies inspector.

1. Title 22, Section 106, Code of Alabama 1940 after providing for the appointment of a rabies inspector by the County Board of Health with the approval of the State Health Officer and the State Veterinarian concludes:

> " *** The compensation of the inspector and his deputies shall be limited to the fees prescribed in the succeeding sections of this chapter."

This limitation upon the compensation to the rabies inspector and his deputies was included in the original Act of 1939, General Acts 1939, page 329. In 1943 the fee for inoculating dogs against rabies was raised from fifty cents to seventy-five cents. General Acts 1943, page 398, approved July 8, 1943.

On June 23, 1945 an Act, including an amendment to Section 110 of Title 22 of the 1940 Code provided as follows:

> "Fees—It is hereby provided that the rabies inspector, or other person authorized to inoculate dogs against rabies, may charge for such services a sum not to exceed seventy-five cents, including cost of the vaccine, for each dog treated for rabies, unless employed on a full time basis, in which event the salary paid by the county or municipality, one or both, shall constitute his total compensation. Where the rabies inspector is on salary, vaccine shall be provided by the county or municipality, one or both, and the fee set forth herein shall be collected by the rabies inspector for the employing agent or agencies. The rabies inspector shall keep a record of all dogs inoculated on forms furnished by the State Board of Health."

Although the above quoted amendment refers to the employment of a rabies inspector on a full-time basis, and the payment of a salary by the county or municipality, one or both, that limitation set forth in Section 106 is not repealed. It is my opinion that the mere reference in the 1945 Act, Acts 1945, No. 195, Section 1, approved June 23, 1945, does not authorize the county to appropriate funds for the salary of a full-time rabies inspector. It

must be presumed that the Legislature knew that the compensation to the rabies inspector in the county was limited as provided in Section 106. This limitation is clear and unambiguous. In order to repeal this limitation it is my opinion that there must either be an act of the Legislature expressly repealing the limitation, or language stronger than the recitals in Section 1 of Act No. 195, General Acts of 1945. The county rabies inspector and his deputies must remain on a fee basis.

2. Although Section 106 of Title 22 limits the compensation of rabies inspectors to the fees prescribed by that chapter of the Code, I do not believe that this limitation should apply to rabies inspectors appointed by virtue of a municipal ordinance. The Office of the Attorney General has heretofore ruled that a municipality may by ordinance regulate the inoculation of dogs within the city. We have further ruled that a municipality may appoint an inspector to enforce the provisions of the ordinance. 25 **Quarterly Report of Attorney General,** pages 53, 55, October 20, 1941. See Title 37, Section 493, Code of Alabama 1940, which provides as follows:

> "§ 493. Vaccination, etc.—All cities and towns of this state shall have the power to adopt all necessary ordinances and enforce the same to prevent the introduction or spread of contagious, infectious, or pestilential diseases in cities or towns, and to that end may provide for a system of compulsory vaccination and enforcement of the same."

Having the power to regulate the inoculation of dogs within the city, together with the power to appoint an inspector to enforce the provisions of the municipal ordinance, it is my opinion that a municipality may appropriate available funds to compensate this inspector.

A municipal corporation may exercise those powers that are, (1) expressly granted, (2) necessarily implied in or incidental to the powers expressly conferred, and (3) essential to the declared objects and purposes of the municipality. **Gambill v. Erdrich Bros.,** 143 Ala. 506, 39 So. 297; **Cleveland School Furniture Company v. Greenville,** 146 Ala. 559, 41 So. 862; 1 **Dillon on Municipal Corporations,** Section 89. It is my opinion that the power to appropriate funds for the payment of the salary of a municipal rabies inspector must necessarily be implied as an incident to the power of the municipality to prevent the introduction or spread of contagious, infectious, or pestilential diseases. Title 37, Section 493, Code of Alabama 1940.

3. Title 22, Section 14, Subsection 12 states:

> "§ 14. Duties of county health officers prescribed.—It shall be the duty of the county health officer: *** (12) *** and the court of county commissioners, or other like board, may in its discretion appropriate from the revenue of the county such sums as are found necessary to furnish and equip the office of the county health officer with all necessary supplies, and furnish all necessary clerical help, transportation, and other expenses of the county health officer, and may in its discretion appropriate, from the revenues of the county, money for the prosecution of public health work which has been recommended by the county health officer and indorsed by the county board of health and approved by said court of county commissioners, or other like board. *** "

Title 12, Section 12, Subsection 19 of the Code provides:

"§ 12. Authority of court.—The court has authority: *** 19. To appropriate money to promote or enforce the health and quarantine laws of the state for the benefit of the county and its inhabitants, when requested so to do by the state board of health. *** "

It is my opinion that these two general laws authorizing the county to appropriate funds for health work cannot control over the specific provisions of Title 22, Sections 106, 110, as amended, Code of Alabama 1940. The fact remains that although the county is authorized to appropriate funds for health work under the provisions of Title 12, Section 12, Subsection 19 and Title 22, Section 14, Subsection 12, the compensation of the county rabies inspector is limited by Title 22, Section 106, Code of Alabama, to "the fees prescribed in succeeding section of this chapter."

Yours very truly,

ROBERT B. HARWOOD,

Attorney General.

August 4, 1945.

Hon. Paul J. Hooton,
City Attorney,
City of Roanoke,
Roanoke, Alabama.

Corporations—Taxation—Municipalities. Title 37, Section 670, Title 51, Section 25, Code of Alabama 1940.

Shares of stock of a domestic corporation are subject to taxation by the municipality in which the home or chief office of said corporation is located. The fact that the physical assets and plant of the corporation are located outside of the corporate limits of the municipality has no bearing on the question of the liability of the corporation for the tax on its corporate shares of stock.

Opinion by Assistant Attorney General Arbuthnot.

Dear Sir:

Your request for an official opinion, bearing date of July 23, 1945, is as follows:

"In re: City of Roanoke, Alabama.

"I believe that Municipalities have the right to ask for opinions of the Attorney General; if that is true, as City Attorney of the City of Roanoke, Alabama, I would like to ask for an opinion on the following:—

"The Roanoke Guano Company has an office in the City of Roanoke, Alabama; its main business is transacted there; this office is maintained for the purpose of transacting the operation of said business:

"However, the situs of all the physical properties and the plant is out side of the City Limits; the question has arisen whether or no the tax on the shares or stock of this Concern, a corporation, can be collected by the City of Roanoke?

"I will be pleased to have your ruling on this matter."

In addition to the information continued in your letter, the records in the office of the Secretary of State discloses that the Roanoke Guano Company was incorporated in 1902 and that its principal office in this State is at Roanoke, Alabama.

In answering your inquiry, I wish to call your attention to Title 37, Section 670, and Title 51, Section 25, Code of Alabama 1940, which Sections are in part as follows:

"§ 670. Levy and assessment of municipal taxes.—After the first day of October of each year, cities and towns may levy taxes upon property and all subjects of taxation liable therefor, at a rate not in excess of the constitutional limit, upon assessments to be made by the city or town clerk, or other person designated by the council, such assessment to be made on the state assessment in the manner provided by the constitution of the state, or in the manner hereinafter authorized by law. *** "

"§ 25. Assessment and collection.—Every share of any domestic corporation, except financial institutions which comply with the provisions of this title as to excise taxes herein levied on such financial institutions *** shall be assessed and the taxes thereon collected in the county wherein such corporation has its home or chief office in the state, and shall be assessed at sixty percent of its value to the person in whose name such shares stand on the books of the corporation and not to the corporation. *** "

It will be seen from Section 25, supra, that shares of stock of a domestic corporation are subject to taxation. The method of assessment of such shares of such stock and the basis of arriving at the value of the same for taxation are set out in Section 25. While under the provisions of said Section the shares are assessed to the person in whose name such shares stand on the books of the corporation and not to the corporation, under the provisions of Title 51, Section 28, Code of Alabama 1940, if a corporation when making the assessment required by Section 25, supra, by endorsement on such assessment or otherwise in writing, "shall agree to pay the taxes, if any, assessed on the shares for the shareholders, it need not file a list of such shareholders." It is my understanding from the Department of Revenue that there are no corporations in the State which do not agree to pay the tax for the shareholders under the provisions of Section 28.

Under the provisions of Section 670, supra, cities and towns "may levy taxes upon property and all subjects of taxation liable therefor." The assessment by the municipality of such taxes must "be made on the state assessment" in the manner provided by law. The method of assessment of shares of capital stock of a domestic corporation provided in Section 25, supra, is the only method of assessment of such shares of stock provided by law.

It is my conclusion from the above authority that corporate shares of stock of domestic corporations are subject to taxation by cities or towns.

From your inquiry, the question then arises as to whether or not, since the situs of all the physical properties and plant of the corporation under consideration are located outside of the corporate limits of the City of Roanoke, the corporate shares of such corporation are taxable by said City.

Under the provisions of Section 25, supra, the situs of shares of stock in a domestic corporation for the purpose of taxation is at "its home or chief office in the state." See **Alabama Clay Products v. City of Birmingham,** 226 Ala. 631, 148 So. 328.

The **Alabama Clay Products Company case, supra,** held that "the location of businesses and executive offices, where the public deals with the management, the governing bodies function and records are kept, rather than the location of plant operations of this character, is to be deemed the location of the 'home or chief office.' 26 R. C. L. p. 180, § 152."

Therefore, it is my conclusion that the corporate shares of stock of the Roanoke Guano Company are subject to taxation by the City of Roanoke.

Yours very truly,

ROBERT B. HARWOOD,

Attorney General.

August 6, 1945.

Hon. J. R. Ennis, License Inspector,
Mobile County,
Mobile 4, Alabama.

Licenses—Bond Makers—Title 51, Sections 460, 477 and 840(b), Code of Alabama 1940. General Acts of 1919, page 403.

A license to engage in the business of making bonds may be issued to a firm or partnership and it is not necessary for each member of the firm or partnership to secure a license to engage in said business. Such license, when the business is actually sold, may be transferred. However, when the bonds are not executed in the name of the bonding company but are executed in the names of the individuals who have authorized the attorney-in-fact to execute the same, each individual is liable for the license levied under the provisions of Section 477, supra.

Opinion by Assistant Attorney General Arbuthnot.

Dear Sir:

Your request for an official opinion, bearing date of July 17, 1945, is as follows:

"Questions have arisen as to the proper construction of Section 477, Title 51 of the Code, which in pertinent parts provide.

> " 'Each person engaged in the business of making bonds and charging for the same, except guaranty companies or corporations otherwise specifically licensed' shall pay a license of $100.00 per annum, and in each city or town in which such person engages in business, and 'that no **person** engaged in the business of making bonds and charging for the same, shall be exempt from paying such license.' (Emphasis supplied.)

"There are several instances in this city where two or more persons constitute a third person, attorney-in-fact, with authority to execute bail bonds in their names. An office is then opened by such persons under some name chosen by them, say for illustration, 'Mobile Bonding Company', but bonds are executed in the names of the individuals, by and through their said attorney-in-fact. As I construe Section 477, it seems that each of these persons, not the Company, should obtain and pay for a license, but attorneys representing these people contend that one license taken out in the name of the Company will suffice. Section 477 seems similar to that which requires each attorney-at-law who engages in the practice to obtain a license, but it has never been contended, so far as I know, that one license would be sufficient for a law firm containing two or more attorneys. The last sentence in Section 477, which says in plain terms, 'that no **person** engaged in the business of making bonds and charging for the same shall be exempt from paying said license', appears to indicate that each member of the so called company should obtain a license.

"Another question has also arisen under this Section, and that is where a person after obtaining a license to engage in the business of making bonds, sells his business to another, can such license be transferred to the purchaser of the business? Several instances in which licenses have been issued to unincorporated companies and not to persons who sign as sureties. The Probate Judge has expressed no opinion as to whether each person in a so called company should obtain a license, taking the position that it is not a question for him to pass upon, but from time to time declined to note a transfer of license where a bail bond maker sells his business. I have not overlooked Section 2, Title 1, of the Code, which provides where 'person' includes a corporation as well as a natural person. I do not contend that a corporation cannot be formed for the purpose of making bail bonds and obtaining a license in a corporate name, but that is not the point here in question.

"If you will at your earliest convenience, kindly advise me whether each of these persons must obtain a license, or will one license issued in their trade name suffice, and whether a license can be transferred when a bail bond maker sells his business, I will greatly appreciate any consideration shown."

This office, in an opinion to the State Tax Commission rendered under date of February 10, 1931, and found in Biennial Report of the Attorney General, 1930-1932, page 88, had under consideration the construction of Schedule 19 of the Revenue Act of 1919, General Acts of 1919, p. 403, which Schedule was as follows:

"Schedule 19. BOND MAKERS.—Each person engaged in the business of making bonds and charging for the same, except guarantee companies or corporations otherwise specifically licensed, one hundred dollars per annum. The payment of the license required by this schedule shall authorize the doing of business only in the town, city or county where paid."

In the above referred to opinion, it was held that the word "person" as used therein included "persons, firms and corporations."

Schedule 19 now appears as Section 477 of Title 51, Code of Alabama 1940, in the same language as it appeared in the 1919 Act with the addition of the following sentence:

"And no person engaged in the business of making bonds and charging for the same shall be exempt from paying said license."

The addition of the above sentence does not operate to change the construction previously placed on the word "person" as it appeared in said Schedule 19. It is my conclusion that the words "no person" appearing in said sentence should be construed to include firms, corporations and partnerships.

The illustration which you use in your request in reference to the license required of attorneys is not applicable for the reason that Title 51, Section 460, under which Section the attorney's license is levied specifically provides "if such business is conducted as a firm or as a corporation in which more than one lawyer is engaged, each lawyer shall pay such license; *** "

In view of the above conclusions, it is my opinion that a license may be issued to a firm or partnership doing a bonding business, and that it is not necessary for each member of the firm or partnership to secure a license under the provisions of Section 477, supra.

The above conclusion, however, is not applicable to the situation presented by your inquiry in which the bonds are not executed by the attorney-in-fact in the name of the bonding company, but are executed in the names of the individuals who have authorized the attorney-in-fact to execute the same. Under such conditions each of the individuals in whose name the attorney-in-fact executes the bonds would be engaging in the business of bond making and, therefore, under the provisions of Section 477, supra, must obtain a license.

Answering your second inquiry, it is my opinion that a license issued to a person, firm, or partnership engaged in the business of bond making may be transferred when the business is sold. Such a transfer is authorized under the provisions of Title 51, Section 840, Code of Alabama 1940, which Section provides in part as follows:

"(b) A business or privilege for which such license is issued is, under actual sale, transferred to a new ownership in which case a transfer of

license may be effected by application to the probate judge originally issuing such license and the payment of a fee of fifty cents."

Yours very truly,

ROBERT B. HARWOOD,

Attorney General.

August 6, 1945.

Hon. S. P. Poyner,
Judge of Probate,
Houston County,
Dothan, Alabama.

Counties must bear same expenses in election provided in Act No. 129, 1945 Acts of the Legislature, as are county expenses in a general election.

Opinion by Assistant Attorney General Smith.

Dear Sir:

Your request for an official opinion, bearing date of July 24, 1945, is as follows:

"Re: Act of the Legislature No. 129, House Bill No. 130-Smyer.

"Since we use Voting Machines in this county, will you kindly prepare for me the 'substance' of this amendment to go on the 2" strip on the face of the machine.

"Also advise me if Sec. 4 of said Act is construed to mean that the State will pay for the Poll List that will necessarily have to be prepared for said election, together with all supplies for the machines, the per diem of the managers and the $3.00 for each manager who attends the instruction school as provided in Acts 1943 page 375, No. 409.

"Will the state also pay for the transportation of the machines to the various precincts and the return of same after the election?"

Your attention is called to the pertinent provisions of Section 166, Title 17, Code of 1940, which are as follows:

"Whenever a constitutional amendment is submitted to a vote of the qualified electors the substance or subject matter of each proposed amendment shall be so printed that the nature thereof shall be clearly indicated *** "

Section 3 of Act No. 129 is as follows:

"Section 3. At the election hereby ordered to be held as herein provided the qualified electors shall vote on such proposed amendment, and on the official ballot provided for such election there shall be printed the following: 'Shall the following be adopted as an amendment to Article XXII of the Constitution of Alabama?' 'Article XXII. The legislature shall have the power to levy and collect taxes for state purposes on net incomes from whatever source derived within this state, including the incomes derived from salaries, fees and compensation paid from the state, county, municipality, and any agency or creature thereof, for the calendar year, 1933, and thereafter, and to designate and define the income to be taxed and to fix the rates of taxes provided that the rate shall not exceed 5 per cent nor 3 per cent on corporations. Income shall not be deemed property for purposes of ad valorem taxes. From net income an exemption of not less than fifteen hundred dollars ($1,500.00) shall be allowed to unmarried persons and an exemption of not less than three thousand dollars ($3,000.00) shall be allowed to the head of a family, provided that only one exemption shall be allowed to husband and wife where they are living together and make separate returns for income tax. An exemption of not less than three hundred dollars ($300.00) shall be allowed for each dependent member of the family of an income tax payer under the age of 18 years. Such tax must be levied upon the salaries, income, fees, or other compensation of state, county and municipal officers and employees, on the same basis as such income taxes are levied upon other persons. The proceeds of such tax, after provision has been made for the payment of administrative expenses and the next two maturing installments of interest on the warrant refunding bonds issued to fund the floating debt existing October 1, 1932, must be used only in the manner and the order following: 1) to create a trust fund for the payment of the principal of all outstanding warrant refunding bonds issued under the authority of Act No. 14, approved February 5, 1935, and Act No. 50, approved February 8, 1935, to fund the floating debt existing October 1, 1932; 2) to become a part of and to supplement the sinking fund heretofore created for the payment of the 'Old Bonded Debt,' as evidenced by Class A Renewal Bonds, Class C Renewal Bonds, and Funding Renewal Bonds, to the extent that the fund, which hereafter shall be an irrevocable trust fund, when invested and the earnings thereon calculated to the maturities of the outstanding bonds, will equal the principal of the unpaid debt; 3) to replace revenues lost to the several funds by reason of exemption of homesteads from the state ad valorem tax; 4) the residue shall be paid into in the state treasury. The corpus of any fund hereby created, and the income from the old trust fund for the payment of the 'Old Bonded Debt,' may be invested by the governor in the bonds or other obligations of the United States or the State of Alabama. Any earnings on the investment of the trust fund for the payment of the 'Old Bonded Debt' shall be payable into and become a part of the fund, and all earnnigs and income from the investment of the trust fund for the payment of warrant refunding bonds shall be deposited with, and become a part of, the fund into which the proceeds of the income tax are paid. After a sufficient amount is accumulated in any fund to equal the prinicpal of the outstanding bonds against the payment of which the fund is created, (except as to interest which shall be an annual charge or may be included in the trust fund) the debt shall be considered paid. All laws relating to the income tax, not in conflict herewith and valid on the date of ratification of this amendment, are hereby validated and confirmed. The provisions hereof with respect to the creation of funds and the use thereof are declared to be self-executing.' "

It is to be observed that while a clear statement of the substance of the proposed amendment will meet the general statutory requirements, nevertheless in view of the provisions of Section 3 of Act 129, a verbatim copy of the proposed amendment should be printed on the ballot. Where a voting machine is used in lieu of a printing ballot, the machine itself is the ballot. Therefore, the exact words set forth in the act as being those that should go on the ballot should be affixed in the proper place on the face of the voting machine.

Section 4 of Act No. 129, 1945 Legislature of Alabama, is as follows:

> "Section 4. Officers for such election shall be appointed, and the election shall be held in all things in accordance with the law governing general elections. The expense of printing the ballots and holding the election shall be paid as expense for holding general elections in this State are paid, and there is hereby appropriated out of the available funds of the State Treasury such amount as may be necessary to defray the same."

In my opinion the Act does not provide for the State paying the expense items outlined in your letter. The only construction that can logically be placed on Section 4 of the Act is a legislative intent that a portion of the expense of the election should be borne by the State and a part by the several counties. Illustrative of one part to be borne by the State is the cost of publishing the Proclamation of the Governor. This obviously required an appropriation from the State Treasury. However, in providing that, "The expense of printing the ballots and holding the election shall be paid as expenses for holding general elections in this State are paid," the Legislature clearly indicated that when a general election certain items of expense are paid by the counties, the counties shall bear the same expenses in the involved election. Therefore, the counties must bear the expense of instructing the election officials, 1943 Acts of the Legislature, p. 375, and the election officials, Section 198, Title 17, Code of 1940, and the costs of preparing the poll list, Section 39, Title 17, Code of 1940. Likewise, the county and not the State must defray the costs of delivering the voting machines to and from the polls.

The crux of this holding in so far as paying the costs of the elections is concerned is that where in a general election a county bears a certain cost, the same expense must be also borne by the county in the election provided by said Act No. 129.

Yours very truly,

ROBERT B. HARWOOD,

Attorney General.

August 8, 1945.

Miss Sibyl Pool,
Secretary of State,
CAPITOL.

PUBLIC OFFICERS—CONSTITUTIONAL PROVISIONS—The inhibition found in Section 116, Constitution of 1901, against the Secretary of State succeeding himself does not apply to one who was appointed to fill an unexpired term of a former Secretary of State.

Opinion by Assistant Attorney General Harris.

Dear Miss Pool:

Your letter of August 8, 1945, requesting an official opinion, is as follows:

"It will be very much appreciated if you will give me your opinion on the following question, viz: Am I, the incumbent Secretary of State by appointment, ineligible for election to succeed myself as such officer under Section 116 of the Constitution of 1901?"

My answer to your inquiry is in the negative. Section 116 of the Constitution of 1901 provides as follows:

"The governor, lieutenant-governor, attorney general, state auditor, secretary of state, state treasurer, superintendent of education and commissioner of agriculture and industries, elected after the ratification of this constitution, shall hold their respective offices for the term of four years from the first Monday after the second Tuesday in January next succeeding their election, and until their successors shall be elected and qualified. After the first election under this constitution no one of said officers shall be eligible as his own successor; and the governor shall not be eligible to election or appointment to any office under this State, or to the senate of the United States during his term, and within one year after the expiration thereof."

A diligent search of the authorities does not reveal that our courts have ever interpreted this section in regard to your question.

Section 138 of the Constitution of 1901 in regard to the election of sheriffs, prior to its amendment, reads in part as follows:

"A sheriff shall be elected in each county by the qualified electors thereof, who shall hold office for a term of four years, unless sooner removed, and he shall be ineligible to such office as his own successor, *** "

The Supreme Court of Alabama in case of Black vs. Pate, 130 Ala. 514; 30 So. 434, had occasion to consider the eligibility of a sheriff who was appointed for an unexpired term to succeed himself for an additional term of four years. The court in this case held in effect that the Constitutional provision which makes a sheriff ineligible to such office as his own successor (Constitution, Section 138) is applicable only to a sheriff elected by the quali-

fied electors of his county for a term of four years, and has no application to a sheriff who had been appointed by the Governor to fill a vacancy and has served out the entire term to the date of his election.

The language used in Section 116 of the Constitution and Section 138 is very similar and in my opinion is of the same legal effect.

You find yourself in the identical situation as that outlined in the case of **Black vs. Pate,** supra.

The case of **Black vs. Pate** has not been overruled or modified since it was rendered by the Supreme Court.

Under the authority of this case you are, therefore, advised that in my opinion you are eligible to succeed yourself as Secretary of State in the State of Alabama.

Yours very truly,

ROBERT B. HARWOOD,

Attorney General.

August 14, 1945.

Hon. Hunter Phillips,
Judge of Probate,
Choctaw County,
Butler, Alabama.

Gasoline Tax Warrants—Counties—Code 1940, Title 51, § 657, as amended—

1. Warrants issued by counties and payable exclusively from funds paid to the counties under Code 1940, Tit. 51, § 657, as amended, may be sold at public or private sale, as deemed best by the county governing body.

2. Such warrants cannot be pledged as collateral to secure the payment of indebtedness payable out of the county's general fund for purposes other than construction, repair and maintenance of public roads and bridges.

Opinion by Assistant Attorney General Matthews.

Dear Sir:

Your request for an official opinion, bearing date of August 8, 1945, is as follows:

"The Court of County Commissioners of this county are anticipating borrowing a sum of money and they expect to issue gasoline warrants as collateral in this matter.

"I will appreciate your giving me an official opinion as to whether or not it is necessary to ask for competitive bids when we issue interest bearing gasoline warrants."

I assume that by use of the words "gasoline warrants" you refer to such instruments as were considered in **Herbert v. Perry,** 235 Ala. 71 and other cases.

Such warrants are creatures of judicial decision and are not expressly provided for by statute. They rest upon the "unlimited jurisdiction and powers" of county governing bodies "as to the construction, maintenance and improvement of the public roads, bridges and ferries in their respective counties." Code 1940, Tit. 23, §43. They create no debt of the county payable from its general fund, but amount merely to contracts of the county, (or assignments) to pay certain sums of money in the future out of funds that it may receive from the State pursuant to Code 1940, Tit. 51, § 657 as amended, (Acts 1943, p. 21, § 2).

Such funds must be used "exclusively for the construction, maintenance, supervision and policing of the public roads and bridges in the respective counties." Acts 1943, p. 21, § 2.

Consequently warrants secured by pledge of such anticipated funds and payable exclusively therefrom, are to be used only for such purposes as the funds so pledged may be used. **Herbert v. Perry,** 235 Ala. 71. **Lyon v. Shelby County,** 235 Ala. 69; **Isbell v. Shelby County,** 235 Ala. 571; **Burleson v. Court of County Commrs.,** 235 Ala. 576.

The county governing body "has the right, in its sound judgment, to offer such warrants for sale at either public or private sale as may by such body be deemed to the best interest of the county." **Burleson v. Court of County Commrs.,** supra, 577.

Obviously such warrants should not be pledged as collateral to secure an indebtedness incurred for purposes other than those enumerated in the statute, towit, construction, maintenance, supervision and policing of public roads and bridges. **Acts** 1943, p. 21, § 2.

The foregoing is predicated upon non-existence of any local legislation affecting the question. I am not advised as to any local act for Choctaw County of such nature, and assume there is none. If there is any such act please let me know.

In the absence therefore of any such local act I am of opinion that it is not necessary to ask for competitive bids for the purchase of interest-bearing gasoline warrants to be issued by Choctaw County.

Such warrants do not, in my opinion, come within the purview of Code 1940, Tit. 12, § 109, Tit. 37, § 259, requiring county bonds to be sold at public sale to the highest bidder after due notice of sale.

Yours very truly,

ROBERT B. HARWOOD,

Attorney General.

August 23, 1945.

Hon. Bowen W. Simmons,
Circuit Solicitor,
Covington County,
Andalusia, Alabama.

Acts 1945, No. 426, H. 8—Probation—

1. Act No. 426, H. 8 is a valid exercise of legislative power under Amendment XXXVIII to the Constitution of 1901.

2. Where application for probation is made by a person pleading guilty or convicted of a criminal offence the clerk of the trial court should comply with the provisions of said act by certifying the action or the inaction of the trial court with reference to the application to the Board of Pardons and Paroles for review.

Opinion by Assistant Attorney General Matthews.

Dear Sir:

Your request for an official opinion, bearing date of August 18, 1945, is as follows:

"Please refer to H. B. No. 8, as I recall the number, which was passed at the last session of the legislature and amends the law with respect to the probation of certain convicted criminals.

"You will observe that this bill requires the circuit judge to hear petitions for probation, and upon his failure to do so, the petition shall, for the purposes of the amendatory act, be treated as if the petition had been denied.

"Thereupon the bill provides that in all cases, those approved and denied, it shall be the duty of the circuit clerk to send the file to the Pardon & Parole Board, whose duty it shall be to review the same, and if they think proper, to send the file to the Court of Appeals of Alabama, which Court shall review the same and enter such order as the Circuit Judge should have entered.

"Is that provision of the bill which authorized and requires the Pardon & Parole Board to review the file and pass upon the proceedings had before the Circuit Judge unconstitutional in that it vests judicial functions in this board by authorizing them to pass upon the merits of the judgment of the court as a condition to further proceedings before the appellate court?

"If you answer that this provision is unconstitutional as invasive of judicial functions, then please further advise if any duty devolves upon the Clerk of the Court to send the file to the Pardon & Parole Board? If not, then does any duty devolve upon him to send the proceedings to the Court of Appeals? Is the Court of Appeals by the terms of the act vested with any lawful jurisdiction to review the judgment of the Circuit Judge?

"An answer to this query is important for a proper determination as to what disposition should be made of the probation cases falling within the terms of the amendatory act. No doubt hundreds of cases will arise that will create much expense that could be saved if the procedure for review is void."

In **Montgomery v. State,** 231 Ala. 1, 41—163 So. 365, 377 (1935) it was held that the power to suspend sentences and grant probation was embraced within the powers of the Governor enumerated in Section 124 of the Constitution of 1901 and could not therefore be delegated to the courts by reason of Section 43 of the Constitution forbidding exercise of executive functions by the judicial department of government.

Subsequently by Amendment XXXVIII (Code 1940, Vol. 1, p. 332) the governor's powers under Section 124 were reduced to the grant of reprieves and commutations to persons under sentence of death, and power was transferred from the executive to the legislature "to provide for and to regulate the administration of pardons, paroles, remission of fines and forfeitures," and to "authorize the courts having criminal jurisdiction to suspend sentence and to order probation."

Inasmuch as the power "to suspend sentence and to authorize probation" was a part of the executive power under Section 124 and executive power is now restricted by Amendment XXXVIII, as above indicated, the effect of the amendment is to lodge in the legislature the power, among others, to suspend sentence and grant probation. The legislature may of course delegate that power to the courts under the express terms of the amendment. But the legislature in the exercise of its newly acquired power is not restricted to exercise thereof through the courts.

Montgomery v. State, supra, squarely holds that courts have no inherent power to suspend sentence and grant probation. Said the court (page 3, par. 4):

"It is too clear to require argument, or citation of authority to demonstrate the proposition, that the courts, in this state clothed with jurisdiction to try criminal actions have no inherent power to suspend indefinitely sentences imposed on persons convicted of crime. The limit of such courts' powers to suspend sentences is reached when the courts suspend the sentence for the purpose of giving effect to an appeal, writ of error, or certiorari, and to preserve the status quo of the parties pending such proceeding. Ex parte Knight, 61 Ala. 482."

Act No. 426, H. 8., to which you refer is therefore, in my opinion a valid legislative enactment by reason of Amendment XXXVIII, and the provision therein for review of the action or inaction of the trial court with reference to applications for probation does not vest judicial power in the Board of Pardons and Paroles, because it is no inherent part of judicial power "to suspend sentences and grant probation."

The somewhat intricate and tedious procedure laid down by the act in question is merely a method whereby the legislature has sought to exercise the power now lodged in it by Amendment XXXVIII, and taken out of the hands of the Governor where it was exclusive prior to the Amendment.

This renders it unnecessary to answer your remaining questions except to say that the clerk of the trial court should comply with the provisions of the Act.

Yours very truly,

ROBERT B. HARWOOD,

Attorney General.

August 30, 1945.

Dr. B. F. Austin,
State Health Officer,
Department of Public Health,
Montgomery 4, Alabama.

Health—Title 22, Section 134—Words and Phrases.

Title 22, Section 134, **Code of Alabama 1940** requiring persons engaged in construction work to drain pits, etc., applies to strip mining operations when mosquito producing water is impounded.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion, bearing date of August 23, 1945, is as follows:

"In connection with strip mining operations, in certain portions of Alabama, bodies of water which are potential sources of the malaria mosquito are being created. The question has arisen as to whether or not this department, under existing laws, has legal authority to enforce malaria control on such waters.

"I am enclosing a report entitled 'Report of Investigation of Strip Mining in Walker County' and invite your attention to recommendation No. 1 which is quoted herewith:

" 'That the office of the Attorney General be requested to render an opinion as to whether or not Title 22, Section 134 of the Alabama Code applies to the excavation of pits in connection with strip mining.'

"Your consideration of our request to render an opinion on this matter will be greatly appreciated."

The report referred to in your inquiry briefly describes the process of strip or surface mining. It is sufficient to say that this process includes the removal of earth or rock from the surface of the ground in order to reach a bed of coal or other mineral. The earth removed is usually piled in a bank. The report continues:

"When a strip-mining site is abandoned, a pit is left having a width of 100 to 200 feet, a depth depending largely upon the thickness of the overburden and extending the length of the area involved. Measures such as filling or draining that would prevent such pits from holding water are not commonly practiced. Where a bed of coal is narrow in width, its removal by strip-mining is similar to the construction of a canal with the soil thrown to either or both sides. Excavations of this nature will also hold water for considerable lengths of time, if not permanently, when provisions for drainage or filling are not made."

It is further stated in the report that these bodies of water have the characteristics of mosquito producing waters, and that larvae of the anopheles were found in two pits which were examined.

The report further discloses that adult malaria mosquitoes have been found in the vicinity of these abandoned strip mining pits. The report concludes:

"It is the opinion of the Walker County Health Department that strip-mining pits have been responsible for malaria transmission in portions of that county. This, together with the fact that pits created for this purpose will more than likely become producers of the malaria mosquito and the wide spread nature of strip-mining operations, strongly indicate the need for remedial action."

Obviously there is a need for remedial action if the Health Department's findings are correct. The question is whether a basis for such remedial action can be found in Title 22, Section 134, **Code of Alabama 1940,** which provides as follows:

"§ 134. Draining and impounding water in the construction of railroads, or public highways, or construction works.—Any person, firm or corporation engaged in the construction of any railroad, public highways, or other construction work in Alabama, shall drain all borrow pits, cuts and fills likely to impound water which shall be dangerous to the public health, and any person, firm or corporation failing to perform the duty imposed in this section shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars, nor more than five hundred dollars."

The evident legislative intent as shown by the above code section is to prevent the impounding of waters which are dangerous to the public health. A statute of this nature should be so construed as to accomplish the purpose intended by the Legislature. It is my opinion that the term "other construction work" as used in the statute is generic and that the strip mining operations referred to in your inquiry are "other construction work" within the meaning of Title 22, Section 134, **Code of Alabama** 1940. The term "any person firm or corporation engaged in *** other construction work in Alabama *** " designates not only those persons constructing railroads and public highways, but also persons and corporations engaged in any type of construction work.

You are advised, therefore, that Title 22, Section 134, **Code of Alabama** 1940 requires a strip mining company or a person engaged in strip mining

to drain all pits likely to impound water which shall be dangerous to the public health.

It is further suggested that the strip mining operations, described in your inquiry and in the report attached, resulting in impounding waters which aid in the breeding of malaria mosquitoes may become the subject of a rule and regulation of the State Board of Health. Title 22, Section 7, subsection 6, **Code of Alabama** 1940. This section authorizes the State Board of Health to adopt rules and regulations providing proper methods and details for administering the health laws of the State. Rules and regulations legally adopted have been uniformly upheld as a valid exercise of the police power. See **Wheeler v. River Falls Power Co.**, 215 Ala. 655, 111 So. 907, and **Parke v. Bradley,** 204 Ala. 455, 86 So. 28.

In conclusion, we call your attention to Title 22, Section 75, Code of Alabama 1940, which provides as follows:

> "The following things, conditions and acts, among others, are hereby declared to be public nuisances per se, menacing public health and unlawful: *** (8) The conduction of a business, trade or industry or occupation, or the doing of a thing, lawful but inherently insanitary or a menace to public health, without complying with safeguards for the protection of health as may from time be prescribed by the rules and regulations of the state board of health."

Yours very truly,

ROBERT B. HARWOOD,

Attorney General.

August 31, 1945.

Honorable A. B. Jeffries, Chairman,
Board of Revenue & Road Commissioners,
Mobile County,
County Building,
Mobile 15, Alabama.

Act No. 517, H. 463, approved July 6, 1945—Mobile County—

Held unconstitutional as being a local act in the form of a general act, and amounting to unauthorized delegation of the taxing power by the Legislature, contrary to Constitution 1901, Section 212.

Opinion by the Attorney General.

Dear Sir:

In response to your oral request for my opinion as to the validity of this Act as affected by Constitution, 1901, §§ 106, 110, and also by Sections 43, 44, and 212 of the Constitution, the following is submitted:

The Act in question is in words and figures as follows:

"To apply in, but only in, counties which have a population of not less than 140,000 nor more than 300,000, according to the last or any subsequent Federal Census, and which counties are wet counties as defined in Section 68 of Title 29 of the Alabama Code of 1940; to require such counties to hold an election for the entire county on the date of the first Constitutional Amendment Election held in the State of Alabama after the final adjournment of the Regular Session of the Alabama Legislature for 1945; at which such election the following question shall be submitted to the qualified voters of said County: '1. Shall a license tax of 2 cents on each twelve fluid ounces, or fractional part thereof, of malt or brewed beverages sold, distributed, delivered, stored, or taken out of storage within this county be levied in this county? Yes..... No .....'; and to provide for the declaration of the result of such election by the Probate Judge of such county.

"BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

"Section 1. In all counties of this State which have a population of not less than 140,000 nor more than 300,000 according to the last or any subsequent Federal Census, and which counties are wet counties as defined in Section 68 of Title 29 of the Alabama Code of 1940, the Revenue and Road Commission or other governing body of such county shall call an election in such county to be in all respects the same as a general election for the selection of members of the House of Representatives of the Legislature of Alabama, provided that in all such counties where voting machines are now authorized or required by law the same must be used, which such election shall be held on the date of the first Constitutional Amendment Election held in the State of Alabama after the final adjournment of the regular Session of the Alabama Legislature for 1945.

"Section 2. At the election provided for in Section 1 hereof, the following question shall be submitted to the qualified electors of such county: '1. Shall a license tax of 2 cents on each twelve fluid ounces or fractional part thereof, of malt or brewed beverages sold, distributed, delivered, stored, or taken out of storage within this county be levied within this county? Yes ..... No .....'

"Section 3. In all such counties the Probate Judge shall, within five (5) days after the date of such election, declare the result thereof by inserting in a newspaper of general circulation published in the county a tabulation of the total votes cast in said election; the total number of votes for the proposition submitted and the total number of votes against the proposition and in the event a majority of the number of votes cast shall be in favor of the proposition the Probate Judge shall declare the proposition adopted and the tax therein provided for to be levied; and if the majority of the number of votes cast shall be against the proposition the Probate Judge shall declare the same defeated and no tax as provided therein shall be levied.

"Section 4. This Act shall become effective immediately upon its passage and approval or upon its otherwise becoming a law.

"Approved July 6, 1945."

The Act must stand or fall on its footing as a general law as defined in Section 110 of the Constitution. Obviously if the Act is in substance a local law as defined in said section it must fall by reason of Section 106 of the Constitution for lack of publication as required by said section.

It is to be noted that the act provides for only one election to be held, and fixes the time for holding said election as "the date of the first Constitutional Amendment Election held in the State of Alabama after the final adjournment of the regular Session of the Alabama Legislature for 1945." And it will be noted also that such election is to be held only in "wet counties," (Code 1940, Tit. 29, § 68) with a population ranging between 140,000 and 300,000, according to the last or any subsequent Federal Census.

A court would take judicial notice that the time thus fixed by reference for holding the election is October 2nd, 1945, when the "first Constitutional Amendment Election" will be held; and that at that time Mobile County will be the only county in the State that can qualify for an election under the Act. It is obvious also that not only does the Act apply to Mobile County alone, but that it can never in the future apply to any other county, because the Act provides for but one election, to-wit, that to be held as aforesaid, and the next Federal Census will not be taken until 1950.

These considerations of themselves, in my opinion are sufficient to invalidate the Act as passed in violation of Section 106 of the Constitution. Whatever its form it is in substance and effect a local law masquerading as a general law. **Birmingham Electric Co. v. Harry.** 215 Ala. 458, 111 So. 41 (1926).

In that case the Court considered an Act of the legislature (Acts 1919, p. 825, as amended by Acts 1923, p. 560), applicable to Jefferson County only and imposing a library tax on litigation therein. The question was whether the Act was a general or a local law, based as it was on population classification. Said the Court:

> "The act in question pretends on its face to be based upon a classification which has often been held in this court sufficient to sustain legislative acts as general laws. Classification of this character—that is, classification based upon population—has generally served as a mere cloak for local laws, but always there has been the possibility at least that such laws might eventually extend to the whole state. In the present case there is no such possibility, and for that reason we think the act in question cannot be sustained as a general law."

In my opinion the classification on basis of population and "wetness" attempted in the Act now in question is so restrictive as to amount to a designation rather than a classification in the true sense of that word. **Moses v. Tigner,** 229 Ala. 645, 159 So. 258; **Kearley v. State,** 223 Ala. 548, 137 So. 420.

The doctrine announced in **Birmingham Electric Co. v. Harry,** supra, has been re-affirmed and followed in numerous cases. In my opinion it applies to the Act now under consideration. See also **Brandon v. Chambers,** 229 Ala. 327, 157 So. 235; **Henry v. Wilson,** 224 Ala. 261, 139 So. 259; **Ward v. State,** 224 Ala. 242, 139 So. 416; **Moses v. Tigner,** supra; **Kearley v. State,** supra.

It is further my opinion this bill is unconstitutional because it is violative of Section 212 of the Alabama Constitution of 1901, which Section is as follows:

> "The power to levy taxes shall not be delegated to individuals or private corporations or associations."

There has been a serious division of our Supreme Court on the question of whether the legislature could delegate its powers save as authorized by the Constitution, which provides:

> "The legislative power of this state shall be vested in the legislature which shall consist of a Senate and House of Representatives."

However, although four of the Justices, constituting a majority of one, have consistently held that although a majority of the states hold the view that the legislature cannot submit to the electorate of the state as a whole the question of when or whether a statute propertly enacted and complete within itself will be operative, they nevertheless lean to the view that such legislation does not offend our Constitution when there is nothing in the Constitution to show a limitation on that right. **In re Opinion of the Justices,** 232 Ala. 60, 166 So. 710. **In re Opinion of the Justices,** 232 Ala. 56, 166 So. 706.

However, the majority, while holding referendums were permissible, were careful to point out that referendums as to tax measures are to be differentiated. See **In re Opinion of the Justices,** supra, at page 714.

Three of the Justices, including the present Chief Justice, have consistently taken the view that our Constitution provides for no State referendum except on amendments to the Constitution, wherein the action of the people shall become permanent until changed by them through further amendment; that action by the legislature in attempting to make the operation of a statute dependant upon referendum might easily lead to the breaking down of representative government and that such referendum procedure is a delegation by the legislature of the law-making power conferred exclusively upon that body by the people in the adoption of our Constitution, and amounts to an unwarranted renunciation of such power and is, therefore, in conflict with the Constitution and subversive of our representative form of government. See minority opinion, **In re Opinion of the Justices,** 232 Ala. 64, 166 So. at page 714.

However, as above stated, when the court has considered the question of imposing taxes by referendum all the Justices have been unanimous in holding that such referendums are unconstitutional the majority on the theory that such procedure is violative of Section 212 of the Constitution that prohibits the delegation of the power to levy taxes, and the minority on the theory held by them in all cases whether the referendum deals with taxes or other matters, that is, that such referendums are an unwarranted delegation of the legislative power. **In re Opinion of the Justices,** 232 Ala. 56; 166 So. 706 (Gross Receipts Tax case).

In the Gross Receipts Tax case, (232 Ala. at page 59, 166 So. at page 709), supra, the four Justices, constituting the majority, wrote as follows:

"In fact, section 212 of the Constitution is as follows: 'The power to levy taxes shall not be delegated to individuals or private corporations or associations.'

"The bill now under consideration is nothing short of a delegation to individuals, that is, the voters of the state, the right and duty of levying the tax in question.

"It is a general rule of constitutional law that a sovereign power conferred by the people upon any one branch or department of the government is not to be delegated by that branch or department to any other. This is a principle which pervades our whole political system and when properly understood admits no exception. And it is applicable with peculiar force to the case of taxation. The power to tax is the legislative power. The people have created a legislative department for the exercise of the legislative power; and within that power lies the authority to describe the rules of taxation and to regulate the manner in which those rules shall be given effect. The people have not authorized this department to relieve itself of the responsibility by a substitution of other agencies. Cooley on Taxation, pp. 99 and 100."

While it is true that the doctrine of the above case was enunciated in connection with submitting tax referendums to the entire state, I can see no basis for differentiation in the principles of these cases on the grounds that the referendum now under consideration would be submitted to the voters of a county. The limitation so created is one of geography and not of the basic principles involved.

It is true that the three minority Justices in the case of **In re Opinion of the Justices,** 232 Ala. 56, at page 58, state:

The power to delegate to counties and cities certain legislative powers relating to local governments is a part of the full legislative powers conferred on the Legislature. The power to prescribe the manner in which local governments shall function includes the power to provide for local referendums. The Constitution itself provides for local referendums in several instances, especially those where bonded indebtedness on long-term levies of taxes are to be imposed."

In view, however, of the strong position taken by the court in considering tax referendums, it is my opinion that the language above quoted in no way weakens the proposition that tax referendums, whether the same be submitted to the entire electorate or to a subdivision of that electorate, are unconstitutional in the absence of specific constitutional provisions permitting such referendums. I have found no such constitutional provision.

For the reasons above set out it is my opinion that Act No. 517, H. 463, approved July 6, 1945, is clearly unconstitutional.

Yours very truly,

ROBERT B. HARWOOD,

Attorney General.

September 4, 1945.

Hon. Raymon D. Fowler,
State Budget Officer,
Department of Finance,
Montgomery, Alabama.

1. Act No. 290, Gen. Acts 1945, not violative of Section 44, Constitution 1901.

2. Where Legislature delegates authority to State Building Commission to prescribe rules and regulations of a minimum building code for the "safety, health, general welfare and morals of the people of Alabama," there is no unwarranted delegation of authority in violation of Section 44, Constitution of 1901.

3. The Legislature has authority, in the absence of constitutional restrictions, to legislate for the safety, health, general welfare and morals of the people under the State police power and has the right to delegate designated police powers to political subdivisions.

Opinion by Assistant Attorney General Gallion.

Dear Sir:

Your request for an official opinion, bearing date of August 13, 1945, is as follows:

"Act No. 290, approved July 7, 1945, requires the Building Commission, of which I am ex officio secretary charged with the duty of certifying to all vouchers for expenses, to promulgate and enforce 'a code of minimum building standards . . . . . applicable to all State building an construction, school houses, hotels, and moving picture theatres in Alabama', the expenses of which shall be payable out of any appropriations made to the Commission. The validity of this Act has been questioned on the constitutional grounds, for it is said that the Act is 'an unwarranted delegation of legislative authority' and violates Section 44 of the Constitution of 1901.

"My inquiry is: Will I be legally justified in vouchering for payment the expense of the Commission in adopting the building code?"
My answer to your question is in the affirmative.

Act No. 290, General Acts 1945, provide for a code of minimum building standards to be promulgated and enforced by the Building Commission of the State of Alabama, which Commission was created by Act No. 128, General Acts 1945. The code of minimum building standards by the wording of Section 2 of Act No. 290 is to apply "to State building and construction, school houses, hotels and moving picture theaters." The code is to be prescribed by the Building Commission and the expense of enforcement is to come from the Commission fund. The purpose to be accomplished is clearly outlined by the Legislature as evidenced by Section 3 of the Act, which in part is as follows:

"The requirements of the building code shall be such that the safety, health, general welfare, and morals of the people of Alabama will thereby be protected."

You state in your letter that the Act has been questioned on constitutional grounds as "an unwarranted delegation of legislative authority and violative of Section 44 of the Constitution of 1901."

Section 44 of the Constitution is as follows:

"The legislative powers of this State shall be vested in a legislature, which shall consist of a Senate and House of Representatives."

I fail to see wherein there has been any "unwarranted delegation of legislative authority" in the Act referred to.

The Legislature is vested with authority, under the police power (Constitution, Section 44), to regulate the internal affairs of this State, embracing the whole system of internal regulations and to legislate for public welfare. See **Perry v. Southern Express Company,** 202 Ala. 663.

The right of the Legislature, acting under the State police power, to enact legislation for the health, safety, protection and general welfare of the people of the State, is such a fundamental one as to need no citation of authority. Certainly there can likewise be no question of its right to employ means to enforce such legislation.

By having the building code prescribed by the Building Commission, the Legislature has simply appointed an agency capable of adopting proper rules and regulations of a technical nature to carry out the general purpose to be accomplished.

Our Supreme Court, in the case of **Alabama Public Service Commission, et al v. Mobile Gas Company,** 213 Ala. 50, stated as follows:

"Under the Constitution of the United States (Article 1, Section 1, U. S. C. Ann., page 1) and of the State (Section 44), the right to legislate is within the legislative department of the government; and that department has the power to authorize administrative officers and boards created by it **to make necessary rules and regulations,** and to clothe them with administrative powers to enforce the provisions of a law." (Emphasis supplied.)

The limitations of the building code are clearly set out in Section 3 of the Act which, as stated, are that "the requirements of the building code shall be such that the safety, health, general welfare, and morals of the people of Alabama will thereby be protected." So long as this is accomplished by the Legislature without constitutional restrictions, there is no constitutional violation.

I can see no unwarranted delegation of authority as would be violative of Section 44 of the Constitution by this feature of the Act.

The Act, by its Section 5, empowers municipalities and counties to adopt the prescribed building code. Further, said municipalities and counties are authorized to extend the building code's applicability to such buildings and structures as "is deemed necessary." I do not here see a constitutional violation. The matter is strictly one of police power for the benefit of the general welfare. The municipalities and counties do not prescribe the code but simply are empowered to apply it where they deem it necessary. Having constant knowledge of local needs and conditions they are well in excellent position to know when such building code should be applied and are therefore well qualified to perform such duty.

The right of the State Legislature to delegate its police power is likewise a fundamental one. Counties and cities are merely political subdivisions created by the State, and the Legislature may delegate them police powers on varied subjects so long as there are no constitutional restrictions. See **Yielding v. State,** 232 Ala. 295.

I do not see that any constitutional restrictions are here applicable. There is no conflict with the general law arising by virtue of municipalities or county governing bodies extending the applicability of the building code by local legislation in their respective jurisdictions, as **such extension is expressly provided for in the general law.** It is, therefore, my opinion that the constitutionality of this feature is upheld.

Act No. 290, providing for the building code as prescribed by the State Building Commission, and Act No. 128, creating the State Building Commission, are kindred enactments and must be construed "in pari materia."

The Legislature has provided in Act No. 290 that the "expenses of the Building Commission in administering this Act may be paid out of any appropriations made to the Commission by the 1945 Legislature." I see no constitutional violation in this method of appropriation, and in my opinion this is within the competency of the Legislature.

By Section 1 of Act No. 128, you, as State Budget Officer, are now Secretary of the Building Commission by the following clause therein:

> "The Governor shall be chairman of the Commission and the budget officer of the State Department of Finance shall be the secretary thereof. *** "

Also by Section 4 of Act No. 128, the following is set forth:

> "All funds of the Commission shall be paid only on the warrant of the comptroller to be issued upon the certificate or voucher certified by the Secretary of the Commission and approved by the Governor."

In conclusion, it is my opinion that the Act does not violate Section 44 of the Constitution of 1901, and that you, as Secretary of the Commission, are legally justified to issue certificates or vouchers as outlined above for the payment of expenses of the Commission in adopting the building code.

Yours very truly,

ROBERT B. HARWOOD,

Attorney General.

September 10, 1945

Hon. S. M. Cobb,
Representative, Wilcox County,
Camden, Alabama.

Constitutionality—Local Act approved August 26, 1927 (Local Acts, 1927, p. 297) unconstitutional.

Opinion by Assistant Attorney General Gallion.

Dear Sir:

Your request for an official opinion, bearing date of August 23, 1945, is as follows:

"I wish to refer you to Act No. 357 of the Local Acts of Alabama 1927, page 297, pertaining to maintenance and running expenses of the automobile of the Deputy Sheriff of Wilcox County, and request your official opinion as to the constitutionality of this Act."

It is my opinion that the above Act is unconstitutional.

This office rendered an opinion on the identical question submitted on June 14, 1932. A copy of this opinion is quoted for your benefit as follows:

"Hon. J .H. Hard, Jr.
Chief Examiner of Accounts
CAPITOL

"Constitutionality—Local Act approved August 26, 1927 (Local Acts, 1927, page 297) unconstitutional.

"Opinion by Assistant Attorney General Screws.

"Dear Sir:

"I have your letter of February 26, 1932 requesting an opinion of this office as to the constitutionality of a Local Act approved August 26, 1927 (Local Acts, 1927, page 297) which authorizes the Court of County Commissioners of Wilcox County to pay to the deputy sheriff a sum not exceeding $30.00 per month for maintenance and running expenses of his automobile, by warrant drawn on the Treasurer of said county to be paid out of the general fund of said county.

"I am of the opinion that said Act is unconstitutional and void as being in violation of Section 104 (24) Constitution of Alabama, 1901 which provides that the Legislature shall not pass a Local Law creating, increasing or decreasing fees, percentages, or allowances of public officers.

"Furthermore, said Act is ambiguous in that it does not specify whether or not it be the Chief Deputy or other deputies who shall receive said allowance, as Section 10188, Code of Alabama, 1923, provides

for the appointment by the Sheriff of a Chief Deputy Sheriff and other deputy sheriffs.

"Yours very truly

"Attorney General."

Quoted from Opinions of Attorney General, Vol. 10, Office Edition, page 243.

It is my opinion that the above ruling is a correct interpretation of the constitutional law of this State applicable thereto and I concur therein.

The only comment that I deem worthy of noting is that, in my opinion, the subject Act also violates Section 96 of the Constitution, which is as follows:

"The legislature shall not enact any law not applicable to all counties in the State, regulating costs and charges of courts, or fees, commission or allowances of public officers."

The purpose of these sections is to provide a uniform system of fees, allowances, etc., applicable to the State as a whole and to obviate the inharmonious state of affairs of allowing different jurisdictions to maintain varied scales of payments to courts and public officers. See **Bridges v. McWilliams, Chairman of Democratic Executive Committee,** et al, 228 Ala. 135; **Jackson, Clerk v. Sherrod, Deputy Solicitor,** 207 Ala. 245; **State v. Spurlock,** 159 Ala. 122, and cases cited thereunder.

The subject Local Act in allowing the Deputy Sheriff of Wilcox County thirty dollars per month for "maintenance and running expenses of his automobile," in my opinion, violates both the spirit and letter of Sections 104(24) and 96 of the Constitution of 1901 and is, therefore, unconstitutional and void.

Yours very truly,

ROBERT B. HARWOOD,

Attorney General.

September 11, 1945.

Hon. J. C. McGough,
Judge of Probate,
Fayette County,
Fayette, Alabama.

Farm-to-Market Road Act of 1943, General Acts 1943, page 311, as amended by Act No. 41, Regular Session, 1945, Approved June 1, 1945.

1. The term "its gasoline tax" means the county's share of the State gasoline tax imposed by Title 51, Section 647, Code of 1940, as

amended, and distributed to the counties under the provisions of Title 51, Sections 655 and 657, Code of 1940, as amended.

2. The term "anticipating tax certificates" includes anticipating tax warrants.

3. State has no equitable lien on county's share of state gasoline tax as security for any advancements made under the provisions of the Farm-to-Market Road Act of 1943, as amended.

Opinion by Assistant Attorney General Melton.

Dear Sir:

Your request for an official opinion, bearing date of August 24, 1945, is as follows:

"Fayette County is proposing to sell its warrants for the purpose of raising funds to construct and improve highways and bridges in the county. Among the highways and bridges which will be so constructed or improved will be a number of farm to market roads which are embraced within the definition of "county roads" contained in the Farm to Market Road Act of 1943, (General Acts of 1943, page 311, as amended by Act No. 41 adopted by the 1945 Session of the Legislature, approved June 1, 1945), and the County will use some of the proceeds it will receive from the sale of said warrants for the purpose of matching the state appropriation made in said act for the benefit of the county.

"The warrants proposed to be sold will be payable in annual installments over a period of 9 years from their date, and will bear interest from their date, payable semi-annually. They will be issued in anticipation of the proceeds which will be received by the county during the life of the warrants from that portion of the gasoline tax levied by the state under Section 647 of Title 51 of the Code of 1940, as amended, and distributed to the county under Sections 655 and 657 of Title 51 of said code, as amended. Both the principal of and interest on said warrants will be payable solely out of, and will be secured by a pledge of that portion of, the state gasoline tax which will accrue to the county during the life of the warrants. The warrants will be of the type discussed in **Cochran v. Marshall County,** 242 Ala. 314, 6 So. (2d) 489; **Isbell v. Shelby County,** 235 Ala. 571, 180 So. 567, and other cases cited therein, and are proposed to be issued under the authority of those decisions.

"In connection with the proposal to issue said warrants, a number of questions have arisen as a result of the amendment to Section 12 of the Farm to Market Road Act contained in the Amendatory Act approved June 1, 1945, above referred to. It is, therefore, respectfully requested that you advise me as to your opinion with respect to the following questions:

"1. Under the first sentence of said Section 12 as so amended, the county 'is expressly authorized to anticipate its gasoline tax or other revenues to such an extent or in such manner as now or hereafter may be provided by law.' Does the phrase 'its gasoline tax' contained in said quotation mean the state gasoline tax, or does it mean only whatever

gasoline tax which the county might be authorized to levy? If you rule that the said phrase means only a gasoline tax which the county may be authorized to levy, does the phrase 'or other revenues' include the proceeds which will be received by the county in the future as its share of the said gasoline tax?

"2. In the first sentence of said Section 12 as so amended, following the quotation above referred to, the counties are authorized 'to issue bonds and anticipating tax certificates for the purpose of procuring funds for the construction and improvement of farm to market roads.' Do the words 'anticipating tax certificates' include warrants of the nature proposed to be issued by the county? If you rule that those words do not include such warrants, then can the county still issue warrants for the said purpose under the authority of the decisions of the Supreme Court above cited, even though specific statutory authority so to do is not contained in the said amendatory act?

"3. In the last sentence of said Section 12 as so amended, it is provided that whenever moneys are advanced by the state to a county in accordance with the provisions of the said section, such moneys 'will be repaid to the state from moneys subsequently accruing to a county under the provisions of this act.' Does the quoted portion of that sentence give the state an equitable lien as security for any advancements so made by it? If so, on what is the lien fixed? Does it extend only to the county's share of the appropriations contained in the Farm to Market Road Act and not effect the county's portion of the state gasoline tax required to be distributed to the county under Sections 655 and 657 of Title 51 of the 1940 Code, as amended? Or does it also extend to the county's share of the state gasoline tax? If you hold that the state has a lien on the county's share of the state gasoline tax to secure the re-payment of any such advances which may be made by the state, is such lien prior and superior to any pledge which may be made by the county of its share of the state gasoline tax as security for the proposed warrants even though such warrants shall be sold and issued by the county before any such advances are made by the state to the county under said act?"

In answer to the first question of Paragraph 1 of your letter, it is my opinion that the phrase "its gasoline tax" referred to in Section 12 of the Farm-to-Market Road Act of 1943, as amended by Act No. 41, passed by the 1945 Session of the Legislature, approved June 1, 1945, means the county's share of the State gasoline tax imposed by Title 51, Section 647, Code of 1940, as amended. This section of the Code imposes a tax of six cents per gallon on the sale, distribution, storage or withdrawal from storage of gasoline, three cents of which is distributed to the 67 counties in equal shares under the provisions of Sections 655 and 657 of Title 51 of the said Code as amended. Although this tax is imposed and collected by the State, the share to which the counties are entitled is paid directly to the treasurer of the counties to be used by the governing bodies of the counties for road purposes only. The state has no claim or control whatsoever over the expenditure of the county's share of the said tax. The control and ownership of the tax is in the county. The phrase would also include any gasoline tax which might be levied and collected by the county by authority of any local act. The phrase, however, does not include any moneys or tax to which the county may be entitled to receive the benefit of under the provisions of the Farm-to-Market Road Act of 1943, General Acts 1943, page 311, as amended by Act No. 41, Regular Ses-

sion 1945, approved June 1, 1945. Any tax or appropriation under the terms of the Farm-to-Market Road Act of 1943, as amended, Supra, to which the county may be entitled could not be pledged by the county for the purpose or in the way and manner proposed in your letter. The answer herein given to the first question of Paragraph 1 of your letter also answers the second question of that paragraph.

Coming to Paragraph 2 of your letter it is my opinion that the answer to your question must be in the affirmative. The term "anticipating tax certificates" was evidently intended to include warrants of the nature dealt with in the case of **Isbell v. Shelby County,** 235 Ala. 571, 180 So. 567, and **Cochran v. Marshall County,** 242 Ala. 314, 6 So. (2d) 489. The words "anticipating tax certificates" is new phraseology in connection with the Code Sections and Acts, Supra, and has not been defined by our courts insofar as I am able to find. However, "anticipation" as used herein has been defined as used in the present for what is to accrue; dealing with income before it is due, Words and Phrases, Vol. 3, Page 521. A tax anticipation is an assignment of tax money if and when collected and creates no debtor obligations on the seller except to apply taxes when collected to the payment of the warrant so far as the amount collected may extend. (Pocket Supplement, Vol. 3, Page 98, Words and Phrases). Section 12 of the Farm-to-Market Road Act, Supra, was amended by Act No. 41, Supra, so as to provide a way and means for the county to procure funds for the construction and improvement of farm-to-market roads by the issuing of anticipating tax certificates. Although the issuance of warrants for such purpose was not granted through specific statutory authority, in looking through form to substance, it is immaterial whether such instruments be denominated warrants or tax certificates, so long as they are merely evidence of a transfer and pledge of a definite fund to their payment. In the case of **Isbell v. Shelby County,** Supra, the court said—"These instruments are not warrants of the county in the true sense, but are merely evidences of a transfer and pledge of a definite fund to their payment. Their issuance amounts in effect to a sale by the county of the anticipated revenue to be derived from the gasoline tax allocated by the state to the county for these purposes. There is no county obligation to pay, and the funds received from a sale of these instruments, denominated warrants, are in no sense a borrowing of money."

In answer to your questions in Paragraph 3 of your letter, you are advised that it is my opinion that any funds which the county may receive under the provisions of the Farm-to-Market Road Act of 1943, as amended, is not a loan. It is more in the nature of payment or an advancement for work and labor done by the county in the construction of farm-to-market roads. However, whatever the relationship may be between the county and the state regarding these funds there is no lien inuring to the state on the county's share of the state gasoline tax distributed to the county under Sections 655 and 657, Supra, by reason of payment or advancement of funds to the county under the provisions of the Farm to Market Road Act of 1943, as amended.

Yours very truly,

ROBERT B. HARWOOD,

Attorney General.

September 13, 1945.

Hon. Hunter Phillips,
Judge of Probate,
Choctaw County,
Butler, Alabama.

Act No. 169, H. 27, General Acts 1945, approved June 23, 1945—Applicability of "The Forest Products Severance Tax."

Where the Legislature enacts an Act imposing a privilege tax upon every person engaging in the State in the business of "severing timber or any other forest products from the soil," the taxpayer under the meaning of the Act is that person who actually performs the act of cutting or felling timber or other forest products so as to constitute a separation from the soil, though the manufacturer is secondarily responsible for the payment of such taxes.

Opinion by Assistant Attorney General Gallion.

Dear Sir:

Your request for an official opinion, bearing date of September 3, 1945, is as follows:

"Mr. W. N. Foshee, who operates a sawmill at Lisman, Alabama, has called me with reference to the payment of severance tax under the new law passed by the recent session of the Legislature. Mr. Foshee's question is, 'who should pay this tax?' In other words, he would like to know if the mill man is supposed to pay the tax or the seller of the timber. I shall appreciate your advising me by official opinion on this matter."

For a determination of an answer to your question, it is deemed appropriate to first quote, in part, Section 2 of Act 169, General Acts 1945, which is the Act you refer to.

Section 2 of the Act provides in part as follows:

" *** There is hereby levied, and shall be collected as herein provided, a privilege tax on account of the business activities upon every person engaging or continuing to engage in the state in the business of **severing** timber or any other forest product **from the soil,** for sale, profit or commercial use whether as owner, lessee, concessionaire or contractor. The privilege tax hereby imposed is in addition to other taxes now levied and shall be known as the Forest Products Severance Tax *** " (Emphasis supplied.)

Your question, as stated, is "who is the taxpayer under the meaning of the Act?" More specifically you inquire as to whether or not the millman is supposed to pay the tax or the seller of the timber.

It is my opinion that the taxpayer is the person who actually severs the timber from the soil, "for sale, profit or commercial use" whether he be millman, seller of timber, or otherwise.

It appears to me that the legislative intent is clearly that the tax shall fall upon such category of persons. By Section 2 quoted in part above, use of the word "sever" is made. By Section 1, the definition of the word "sever" is as follows: **"The word 'sever' means to fell, cut or otherwise separate from the soil."** (Emphasis supplied.) The phraseology of Section 2 is clearly that the tax falls upon such person who engages in the business of **severing timber,** and by way of emphasis states that this shall be whether or not such person acts as "owner, lessee, concessionnaire, or contractor."

There can be no ambiguity in the definition of the word "sever" as it is expressly defined by the Act itself. The tax is a privilege tax on the person engaged in the business of severing timber. **Words and Phrases,** Permanent Edition, Volume 14, page 593, defines the term "engaged" as actually doing an act. "The word 'engaged' denotes action. It means to take part in." In the Alabama case of **Gillman v. State,** 55 Ala. 248, quoted in the Words and Phrases citation, supra, a license tax on any person "engaging in or carrying on the business of keeping a theater was held to mean an actual use or management of the theater." It is obvious that "engaging in the business of severing timber" here relates to engaging in the actual severance itself of the timber. This intent of the Legislature is further substantiated by the fact that the measure of the current tax is on the basis of board feet which the taxpaying party cuts. See Section 3 of the Act.

The matter of determining upon whom the tax falls is, in my opinion, one of factual determination in each given case as to who actually cuts the timber. Thus there could be no conclusive category of individuals such as millmen, or sellers, etc., liable for the tax. The timber might be sold as standing timber, it might be sold as logs, or there might be a middleman contractor converting timber to logs. In any event, it is my opinion that the tax would apply against such person or persons who actually perform the act of cutting or felling timber so as to constitute an actual "separation from the soil." Responsibility for the payment of the tax herein created would depend on this fact alone.

While, as above stated, the person who actually cuts or severs timber is primarily liable for the Severance Tax imposed by this Act, it should be pointed out that under the provisions of Section 7 of this Act every manufacturer of forest products shall within thirty days after the expiration of each quarter annual period expiring, respectively, on the last day of March, June, September and December of each year, file with the Department of Revenue of the State of Alabama, a statement under oath, on forms prescribed by the said Department of Revenue, showing the kinds of forest products and the gross quality of each manufactured during the preceding quarter annual period by such manufacturer showing the county or counties in which such products were severed from the soil and showing the gross quantity, if any, of such forest products severed from soil outside the State of Alabama, and such other reasonable and necessary information pertaining thereto as the Department of Revenue may require for proper enforcement of the provisions of this Act. **At the time of rendering such quarter annual reports, the manufacturer of forest products shall pay to the Department of Revenue the Forest Products Severance Tax herein imposed, with respect to all forest products severed from the soil in the State of Alabama and embraced in such report.** (Emphasis supplied.)

Thus the manufacturer is made secondarily liable for the payment of these taxes and it would appear that in order to protect himself from these taxes he should collect the same from the party or parties from whom he buys such products.

It is readily seen that imposing this secondary liability on the manufacturer for the Severance Tax in many instances affords the State the only practicable means of collecting these taxes that could be open to the State.

Yours very truly,

ROBERT B. HARWOOD,

Attorney General.

September 17, 1945.

Hon. W. W. Hill,
Judge of Probate,
Montgomery County,
Montgomery, Alabama.

Acts 1945,—No. 366, H. 606, July 9, 1945

Acts 1945,—No. 353, H. 352, July 6, 1945

Veterans' Licenses—Exemptions—Disabled Veterans—

1. Disabled veteran of World War II entitled to $25 exemptions under Act No. 366, supra, and also, for three years, to $35 exemptions under Act No. 353, supra, and to apply such exemptions in payment for two or more licenses, except rolling-store and motor vehicle licenses, provided his property is not valued at $5,000 or more, or his net annual income is not $2,500 or more, and provided also he is a legal resident of the State at the time he applies for license.

2. Veteran of World War II entitled, whether disabled or not, to $35 exemptions under Act No. 353, supra, for three years and to apply such exemptions towards payment of two or more licenses except rolling-store and motor vehicle licenses, provided his property is not valued at $5,000 or more or his net annual income is not $2,500 or more, and he is a legal resident of the State at the time he applies for license.

3. All such licenses, as to which exemptions are allowed, are non-transferable.

4. Veterans licenses under said acts may not be issued in more than one county or in more than one municipality.

Opinion by Assistant Attorney General Matthews.

Dear Sir:

Your request for an official opinion, bearing date of September 12, 1945, is as follows:

"The License period for the State of Alabama begins October 1 and we are somewhat puzzled over what exemptions are to be allowed veterans of World War One and veterans of World War Two since Section 852 of Title 51, amended in 1940, was again amended by the 1945 Legislature and it seems to put Veterans of World War One in one class and veterans of World War Two in another class. So that we might be in position to comply with all the provisions of this Act, will you kindly answer the following questions:

"1. World War One gives exemption in the amount of $25.00 for the State, County and Municipality. The 1945 Legislature increased this amount to $35.00. Does a veteran, both, of World War One and World War Two receive the combined exemption: namely, $60.00?

"2. In the original Act the veteran must be disabled 25% before receiving this exemption but we note that in the present Act no mention is made of this disability. Does the present Act of the Legislature remove the 25% disability clause from both World War One and World War Two veterans?

"3. Should a veteran engage in a business and obtain a license for said business and for some reason decide to dispose of this business, is this license transferable to any other person not a veteran?

"Our understanding at the present time is that a World War One veteran still must be 25% disabled and he is to receive a maximum of $25.00 exemption while veterans of World War Two whether disabled or not are to receive $35.00 exemption.

"Thanking you for your interpretation of these Acts for us and earnestly requesting an early reply."

Code 1940, Title 51, Section 852 et sequitur were evidently designed to grant exemptions from license taxes to all disabled persons therein designated to the extent of $25 for each state, county or municipal license they might apply for.

By Act No. 564, H. 28, approved July 10, 1943, (General Acts 1943, page 562) Section 852 was amended to include disabled veterans of World War II. By Act No. 366, H. 606, approved July 9, 1945, Sections 853-855, inclusive, and Section 864 were radically amended so that with respect to disabled veterans entitled to $25 exemptions the law is now embodied in said Act of 1945 and the Act of 1943.

With respect to state, county and municipal licenses it was originally provided that no veteran "shall be entitled to the prescribed deduction or commutation in respect of more than one business or occupation for which a license tax is prescribed by law." Title 51, Sections 853, 854, 855. This proviso has been eliminated by amendment and in lieu thereof it is now expressly provided with respect to all such licenses that veterans "who shall engage in or carry on any businesses or occupations *** for which businesses or occupations license taxes are prescribed *** shall be entitled to licenses *** upon payment of the license taxes so prescribed, less all such portion of such li-

cense taxes as shall not exceed twenty-five dollars." (Act No. 366, supra, Section 1, 2, 3).

The result is, in my opinion, that whereas before amendment disabled veterans could apply the $25 "deduction or commutation" in payment of a license, whether state, county or municipal, for only one business or occupation, they are now entitled to apply such deduction or commutation as a credit in payment for two or more licenses and obtain such licenses by payment of the balance due after application of the credit.

By Act No. 353, H. 352, approved July 6, 1945, it was provided, without reference to disability, that for a period of three years "veterans who shall engage in or carry on any businesses or occupations for which license taxes are prescribed *** shall be entitled to licenses *** upon payment of the license taxes prescribed, less, as regards each veteran such portion of the license taxes as shall not exceed $35." (Sections 2, 3, 4). In Sections 2 and 3 of the Act, however, it was expressly provided that such exemption might not be claimed in more than one county for a county license or in more than one municipality for a municipal license.

This Act is a new and independent enactment of temporary duration only, and was designed, in my opinion, as a supplement to the legislation allowing the $25 exemptions to disabled veterans. I am unable to find any conflict in the legislation restricted to disabled veterans and the legislation providing the temporary exemption for all veterans, whether disabled or not. The result is, as I see it, that a disabled veteran of World War II may, provided he qualifies under the other provisions of law, claim both the $25 exemption and the $35 exemption for a period of three years and may apply such credits amounting to $60 in payment of two or more licenses whether they are state, county, or municipal licenses, and upon payment of the balance due after allowing for the credit such veteran would be entitled to the licenses.

I have received numerous requests for my official opinion as to the construction, operation and effect of the two aforementioned acts of 1945, and I am endeavoring to answer them all in one opinion.

The foregoing will, I trust, serve as sufficient answer to your three numbered questions, but it may not be amiss, in view of the state-wide importance of this legislation, to make further observations as to the present state of the law in regard to veteran's exemptions.

Exemptions do not apply for payment of rolling store licenses or for payment of motor vehicle licenses, nor is any veteran entitled to any exemptions whatever if his property is valued at $5,000 or more or if his net annual income amounts to $2,500 or more. It is to be remembered, also, that only "bona fide permanent residents of the State of Alabama" are entitled to exemptions and, in my opinion, this means simply persons who are legal residents or have a legal domicile in the state at the time of application for the license.

Nor are such licenses transferable. They must be marked across their faces "War Veteran License—Not Transferable." Any transfer or attempt to transfer such licenses operates as a forfeiture thereof, and as a forfeiture of

any further right of exemption, deduction or commutation. Code 1940, Title 51, Section 857; Act No. 353, approved July 6, 1945, supra, Section 5.

Necessarily the foregoing is not a complete or comprehensive answer to all questions that may arise in the future as to the interpretation or construction of existing laws as to veterans' exemptions. It will, however, I believe, serve as sufficient answer to such questions as have arisen up to this time.

Yours very truly,

ROBERT B. HARWOOD,

Attorney General.

September 20, 1945.

Hon. F. L. Gaddis,
Judge of Probate,
Autauga County,
Prattville, Alabama.

Section 7 of Act No. 478, 1945 Session of the Legislature, approved July 7, 1945, construed.

Opinion by Assistant Attorney General Arbuthnot.

Dear Sir:

Your request for an official opinion, bearing date of August 24, 1945, is as follows:

"Act 478 approved July 7, 1945 sets up the procedure for Absentee Voting in Alabama.

"Under Section 7 of said Act it provides that

" 'The official receiving absentee ballots shall make, as the envelopes containing ballots are received by him, a list showing the dates when received and the names of the absentee voters with the respective precinct in which they are respectively qualified to vote as the same may appear on the envelopes, which list he shall keep open to inspection by the public at all reasonable times and occasions. **On the fourth day before the election, the official receiving absentee ballots shall publish in some newspaper published in the county the list which he is required to keep. In the event no newspaper is published in the county, the list shall be posted in front of the court house door on the fourth** day before the election.'

"As our Elections are always held on Tuesday the fourth day before the Election would fall on Friday.

"The only weekly newspaper published in Autauga County is published each Thursday.

"Please advise the procedure for me to follow in this county."

Since no newspaper is published in Autauga County on Friday which is the fourth day before the election, for the purpose of complying with the provision of Section 7 of Act No. 478, set out in your request, you are in the same position as if no newspaper is published in the county. In the event the newspaper will not change its date of publication from Thursday before the election to Friday before the election, you should proceed as if no newspaper is published in Autauga County and post the list of absentee voters "in front of the court house door on the fourth day before the election."

Yours very truly,

ROBERT B. HARWOOD,

Attorney General.

September 21, 1945.

Hon. Eugene H. Hawkins,
Judge of Probate,
Jefferson County,
Birmingham 3, Alabama.

Certificate of honorable service is in same category as an honorable discharge, and holder of such certificate is entitled to have same recorded free of charge under the provisions of Section 51, Title 60, Alabama Code of 1940.

Opinion by Robert B. Harwood, Attorney General.

Dear Sir:

Your request for an official opinion, bearing date of September 18, 1945, is as follows:

"Please advise whether or not the Certificate of Service of an officer who has served in World War II may be recorded in the office of the Probate Judge under the provisions of Title 60, Section 51, of the Code of 1940, without payment of recording fee."

Section 51, Title 60, of the Alabama Code of 1940 is as follows:

"Sec. 51. Recordation of honorable discharge.—Any person who holds an honorable discharge from the United States army, navy or marine corps may present the same to the probate judge of the county wherein he or she may reside, and the probate judge shall cause the same to be recorded in the book described in section 50 of this title and there shall be no fee charged for this service."

In my opinion the words "honorable discharge" as used in this section is used in a generic sense, and was intended by the legislature to include honorable termination of military service. This view is reinforced by the wording of Section 50 of Title 60, Alabama Code of 1940, pertaining to the record book to be kept in the probate office wherein honorable discharges are to be recorded. This section provides that "the pages of which shall correspond with the printed matter appearing on an honorable discharge from the military service of the United States of America."

It is well known enlisted personnel when finally discharged from military service are given an honorable discharge in appropriate cases. Officers who are returned to inactive status are given a certificate of honorable service. For all practical purposes release to inactive duty evidenced by a certificate of honorable service constitutes a termination of military service on the part of the officer. The certificate of honorable service given to officers is highly analogous to the honorable discharge given to enlisted personnel. This view is reinforced when it is remembered that the converse of this proposition is also true. That is, the dishonorable discharge given to an enlisted man, or a dismissal from the service imposed on officers, is regarded as being in virtually the same category execpt that one applies to enlisted personnel and the other applies to officers.

It is therefore my opinion that the certificate of honorable service awarded to an officer who is returned to inactive status is in the same category as an honorable discharge from military service and is entitled to the same treatment, and the holder thereof is entitled to the same privileges as the holder of an honorable discharge.

Yours very truly,

ROBERT B. HARWOOD,

Attorney General.

QUARTERLY REPORT, ATTORNEY GENERAL

JULY 1, 1945, THROUGH SEPTEMBER 30, 1945.

INDEX TO VOLUME XL

Page

ABSENTEE BALLOTS:
- Publication of list of under Act No. 478, General Acts 1945 53
- Requirements for obtaining under Act No. 478, General Acts 1945 14

ACTS (GENERAL AND LOCAL):
GENERAL ACTS 1943:
- Page 115 13
- Page 398 17

GENERAL ACTS 1945:
- Act No. 41 44
- Act No. 128 40
- Act No. 129 25
- Act No. 169 48
- Act No. 195 17
- Act No. 290 40
- Act No. 353 50
- Act No. 366 50
- Act No. 426 ..... 10, 31
- Act No. 478 ..... 14, 53
- Act No. 517 35

LOCAL ACTS 1927:
- Page 297 43

LOCAL ACTS 1945:
- H. B. 624 13
- H. B. 625 13

BALLOTS:
- Absentee—Requirements for obtaining under Act No. 478, General Acts 1945 14
- Absentee—Publication of list of under Act No. 478, General Acts 1945 53
- Income tax amendment proposed by Act No. 129, General Acts 1945—Voting machines—Copy of proposed amendment should be placed on face of 25
- Income tax amendment proposed by Act No. 129, General Acts 1945—Proposed amendment should be printed on 25

CLERKS OF CIRCUIT COURTS:
- Order or failure to make order upon application for probation—Certified by to Board of Pardons & Paroles 10

INDEX—Continued

Page

CODE OF ALABAMA 1940:

TITLE 12:
Section 109 29

TITLE 17:
Section 166 25

TITLE 22:
Section 75 33
Section 110, as amended 17
Section 134 33

TITLE 37:
Section 59 29
Section 493 17
Section 670 20

TITLE 42:
Section 21, as amended 10

TITLE 51:
Section 3 6
Section 460 22
Section 477 22
Section 647 44
Sections 655 and 657, as amended 44
Section 657, as amended 29
Section 670 20
Section 840(b) 22

TITLE 52:
Section 207 9
Sections 254, et seq. 5

TITLE 60:
Section 51 54

CONSTITUTION 1901:

Amendment III 5
Amendment XXXVIII 31
Section 44 40
Section 96 43
Section 104(24) 43
Section 105 13
Section 116 28
Section 212 35

INDEX—Continued

Page

CONSTITUTIONALITY:

Act No. 357, Local Acts 1927, p. 297, unconstitutional 43
Act No. 290, General Acts 1945, not violative of Section 44, Constitution 1901 40
Act No. 517, General Acts 1945 (Mobile Beer Tax Act) unconstitutional 35
Walker County—Tax Assessor—Tax Collector—H.B. No. 624 and 625, Local Acts 1945, changing term of office of—unconstitutional 13

CORPORATIONS:

Taxation—Municipalities—Stock of domestic corporations 20

COUNTIES:

Farm-to-Market Road Act, as amended (Act No. 41, Gen. Acts 1945)—Term "its gasoline tax" means county's share of tax imposed by Title 51, Section 647 44
Farm-to-Market Road Act, as amended (Act No. 41, Gen. Acts 1945)—Term "anticipating tax certificates" includes anticipating tax warrants 44
Farm-to-Market Road Act, as amended (Act No. 41, Gen. Acts 1945)—State has no lien on county's share of State gasoline tax for advancements made under 44
Gasoline tax warrants—For what purpose same may be pledged as collateral 29
Gasoline tax warrants—May be sold at public or private sale 29
Income tax amendment proposed by Act No. 129, Gen. Acts 1945—Must bear expense as in general elections 25
Manufacturing plants—Exemption of addition to or extension of 6
Public schools—May appropriate funds to Board of Education to improve lighting in 9
Rabies inspector—Authority to employ and pay salary 17

COUNTY BOARDS OF EDUCATION:

County may appropriate funds to for improving lighting in public school buildings 9

COURTS OF COUNTY COMMISSIONERS:

Gasoline tax warrants—May be sold at public or private sale 29
Gasoline tax warrants—For what purpose same may be pledged as collateral 29
Income tax amendment proposed by Act No. 129, Gen. Acts 1945—County must bear expense as in general elections 25
Manufacturing plants—Exemption of addition to or extension of 6
Public schools—May appropriate funds to Board of Education to improve lighting in 9

INDEX—Continued

Page

DEPARTMENT OF REVENUE:

Severance tax levied under Act No. 169, Gen. Acts 1945—
Upon whom tax levied 48

ELECTIONS:

Absentee ballots—Publication of list of under Act No. 478, Gen. Acts 1945 53
Act No. 478, Gen. Acts 1945, not applicable to special elections 14
Constitutional amendment—Income tax (Gen. Acts 1945, Act No. 129)—A general election 14
Income tax amendment proposed by Act 129, Gen. Acts 1945—Voting machines—Copy of proposed amendment should be placed on face of 25
Income tax amendment proposed by Act 129, Gen. Acts 1945—Ballot—Proposed amendment should be printed on 25
Income tax amendment proposed by Act 129, Gen. Acts 1945—County bears expense as in general election 25

EXEMPTIONS:

Licenses—Veterans—Exemptions under Acts No. 353 and 366, Gen. Acts 1945 50
Manufacturing plants—Addition to or extension of 6

GASOLINE AND GASOLINE TAX:

Farm-to-Market Road Act, as amended (Act No. 41, Gen. Acts 1945)—Term "its gasoline tax" means county's share of tax imposed by Title 51, Sec. 647 44

HEALTH AND HEALTH DEPARTMENT:

Rabies inspector—County not authorized to employ and pay salary 17
Rabies inspector—Municipalities authorized to employ and pay salary 17
Strip mining operations—Persons engaged in must drain pits, etc. 33

HIGHWAYS AND HIGHWAY DEPARTMENT:

Farm-to-Market Road Act, as amended (Act No. 41, Gen. Acts 1945)—State has no lien on county's share of State gasoline tax for advancements made under 44
Farm-to-Market Road Act, as amended (Act No. 41, Gen. Acts 1945)—Term "anticipating tax certificates" includes anticipating tax warrants 44
Farm-to-Market Road Act, as amended (Act No. 41, Gen. Acts 1945)—Term "its gasoline tax" means county's share of tax imposed by Title 51, Sec. 647 44

INDEX—Continued

Page

JUDGES OF PROBATE:

Certificate of honorable service must be recorded free of charge 54

LICENSES:

Bond makers—May be issued to firm or partnership 22
Bond makers—Transfer of 22
Bond makers—Each individual must obtain license when bond executed in name of individuals rather than name of bonding company 22
Veterans—Exemptions under Acts No. 353 and 366, Gen. Acts 1945 50

MILITARY AND NAVAL AFFAIRS:

Officers—Certificate of honorable service—Must be recorded free of charge 54

MOBILE COUNTY:

Act No. 517, Gen. Acts 1945 (Beer Tax Act) unconstitutional 35

MUNICIPALITIES:

Rabies inspector—Authority to employ and pay salary 17
Taxation—County special school tax—Property annexed after effective date of levy 5
Taxation—Stock of domestic corporations 20

OFFICERS AND OFFICES:

Secretary of State appointed to fill unexpired term—May succeed himself 28

OPINIONS OVERRULED, MODIFIED & DISTINGUISHED:

Biennial Report 1930-32, page 507 9

PARDONS, PAROLE AND PROBATION:

Act No. 426, Gen. Acts 1945—Valid exercise of legislative power under Amendment XXXVIII, Constitution 1901 31
Order or failure to make order upon application for probation certified by clerk to Board of Pardons and Paroles 10
Probation—Certification of action or inaction on application by clerk of court 31

INDEX—Continued

Page

SCHOOLS:

County special school tax—Property annexed to municipality after effective date of levy 5
County may appropriate funds to Board of Education to improve lighting in public school buildings 9

SECRETARY OF STATE:

Appointed to fill unexpired term—May succeed himself 28

STATE BUILDING COMMISSION:

Act No. 290, Gen. Acts of 1945, not violative of Sec. 44, Constitution 1901 40

STATE AND STATE DEPARTMENTS:

Act No. 290, Gen. Acts 1945, not violative of Sec. 44, Constitution 1901 40

TAX ASSESSORS:

H. B. No. 625, Local Acts 1945, changing term of office of—Unconstitutional 13

TAXATION:

EXEMPTIONS—Manufacturing plants—Addition to or extension of 6
Municipalities—County special school tax—Property annexed after effective date of levy 5
Municipalities—Stock of domestic corporations 20
Severange tax levied under Act No. 169, Gen. Acts 1945—Upon whom tax levied 48

TAX COLLECTORS:

H. B. No. 624, Local Acts 1945, changing term of office of—Unconstitutional 13

VETERANS:

Licenses—Exemptions under Acts No. 353 and 366, Gen. Acts 1945 50
Officers—Certificate of honorable service—Must be recorded free of charge 54

INDEX—Continued

Page

WALKER COUNTY:

Tax Assessor—Tax Collector—H. B. No. 624 and 625, Local Acts 1945, changing terms of office of—Unconstitutional 13

WARRANTS:

Gasoline tax—For what purpose same may be pledged as collateral 29
Gasoline tax—May be sold at public or private sale 29

WILCOX COUNTY:

Act No. 357, Local Acts 1927, page 297, unconstitutional 43